

**R23. Administrative Services, Facilities Construction and Management.****R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R23-23-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63A-5-205.5.

**R23-23-2. Authority.**

This rule is authorized under Subsection 63A-5-103(2)(a), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205.5 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

**R23-23-3. Demonstration of Compliance.**

(1) At such time as a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain and submit to the director a written Statement of Compliance in the form published on the division's website.

(2) At such time as a subcontractor of a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain from the subcontractor a written Statement of Compliance in the form published on the division's website.

**R23-23-4. Compliance Subject to Audit.**

A contractor or subcontractor's compliance with Section 63A-5-205.5 is subject to an audit by the division or the Office of the Legislative Auditor General.

**R23-23-5. Penalties.**

The penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of Section 63A-5-205.5 may include:

(1) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(2) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(3) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(4) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract.

**R23-23-6. Benchmark Available on Division's Website.**

The commercially equivalent benchmark for the qualified health insurance coverage that is provided by the Department of Health in accordance with Utah Code Subsection 26-40-115(2) is available on the division's website.

**KEY: health insurance, contractors, contracts, contract requirements**

**June 26, 2018**

**Notice of Continuation April 11, 2019**

**63A-5-103(2)(a)**

**63A-5-205.5**

**R64. Agriculture and Food, Conservation Commission.****R64-3. Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES).****R64-3-1. Authority and Purpose.**

Pursuant to Section 4-18-107, this rule establishes general operating practices and procedures for implementing the Agriculture Certificate of Environmental Stewardship (ACES).

**R64-3-2. Definitions.**

(1) "Technical Standards": means a collection of practices adopted by the Commission that will protect the environment in a reasonable and economical manner while still protecting the sustainability of agriculture.

(2) "workbook": means information relating to the implementation of best management practices, education requirements, and information required for ACES certification. The workbook(s) is considered property of the owner/operator and remains in their possession. The workbook(s) shall be retained by the owner/operator and available for review by the Department upon request.

(3) "Agriculture Sectors": means; a Farmstead, Animal Feeding Operation, Grazing or Pasture Operation, and Cropping System.

(4) "Animal Feeding Operation" (AFO): means a lot or facility where the following conditions are met: animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period; crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste

(5) "Best Management Practices" (BMP): means common acceptable practices, including but not limited to use of technology and management policies, used by sectors of agriculture in the production of food and fiber that protect and sustain natural resources.

(6) "Certification Forms": means contact information and sector(s) verification page(s) that are reviewed by the planner and verified by the Department.

(7) "Planner(s)": means a planner(s) of a local conservation district, or other qualified planner, that has been certified by NRCS or Grazing Improvement Program Coordinator(s), and is approved by the commission to certify an agriculture operation under the ACES Program.

(8) "Commission": means the (Utah) Conservation Commission (UCC).

(9) "Comprehensive Nutrient Management Plan or Nutrient Management Plan" (CNMP/NMP): means a plan to properly store, handle, and spread manure and other agriculture byproducts to protect the environment and provide nutrients for the production of crops (plants).

(10) "Cropping": is the area where crops are planted, raised, and harvested. This includes but is not limited to fruits, vegetables, grain, oil seeds and alfalfa.

(11) "Environmental Issues": means any negative or adverse effect on a natural resource caused by human impact(s) such as nutrients, pesticides, petroleum products, pharmaceuticals, recreation, and sediment.

(12) "Department": means the (Utah) Department of Agriculture and Food (UDAF).

(13) "DEQ": means the (Utah) Department of Environmental Quality.

(14) "DWQ": means (Utah) Division of Water Quality.

(15) "Education modules": means education materials which provide information on best management practices and current regulations either in workshops/training and/or online at

Department of Agriculture and Food ACES site (<http://ag.utah.gov/aces/index.html>), that will inform and/or educate the producer on requirements in ACES.

(16) "Farmstead": is considered to be the central area of operation which may include but not limited to home/office, yards, storage facilities, and other buildings.

(17) "Grazing and Pasture": is considered to be any vegetated land that is grazed or has the potential to be grazed by animals.

(18) "Grazing Improvement Program Coordinator(s)": are professionals who improve the productivity and sustainability of our rangeland and water sheds through properly managing grazing by time, timing, and intensity.

(19) "NRCS": means the Natural Resources Conservation Service.

(20) "Owner/Operator": means any person(s) who has legal, financial or daily decision making responsibility for the operation.

(21) "Operation": means the agricultural entity requesting certification for ACES.

(22) "Technical Service Providers (TSP)": are individuals, private businesses, nonprofit organizations, or public agencies outside of the U.S. Department of Agriculture (USDA) that help agricultural producers apply conservation practices on the land, and/or NRCS certified.

(23) "Verification": means an audit performed by the Department of Agriculture and Food.

**R64-3-3. Requirements and Procedure to Qualify for the Agriculture Certificate of Environmental Stewardship (ACES).**

(1) Owner/operator shall complete the requirements in the workbook(s) for each desired sector (farmstead, animal feeding operation, grazing and pasture, and cropping). Workbook(s) are available at the Department's website (<http://ag.utah.gov/aces/index.html>).

(2) Planner(s) shall be available from conservation districts to aid owner/operators in meeting the requirements of ACES which are in the workbook(s).

(3) Requirements found in the workbooks shall be reviewed and site visit conducted by a planner(s), in preparation for Commission certification.

(4) Verification shall be conducted by the Department after a site visit by the planner(s) has occurred and before Commission certification.

(5) Owner/operator shall complete education requirements prior to certification either by:

(a) completing workshops/training endorsed by ACES;

(b) completing education modules found on the Department's website (<http://ag.utah.gov/aces/index.html>) under the ACES Program; or

(c) combination of workshops/training and education modules from the Department's website.

(6) Once the operation has completed requirements and been approved by the planner(s) and verified by the Department, the operation may request certification from the Commission.

(7) The Commission may certify the operation after the operation has requested certification and after reviewing the planner(s) and Department records.

(8) When an operation is certified for a given sector, the Department shall provide a certificate for that sector

(9) After completion of all sectors the operation is involved in, the Department shall provide a sign.

(10) Owner/operator shall be charged \$100 for each sector certified, not to exceed \$250 total per certification period.

(11) An Animal Feeding Operation may request permit by rule coverage from DWQ by completing the request form found on the back page of the workbook and submitting it to DWQ with a copy of their ACES certificate.

**R64-3-4. Requirements and Procedures for Renewing, Investigation of, Revoking or Extending the Agriculture Certificate of Environmental Stewardship (ACES).**

(1) Prior to the five (5) year certificate expiration date, the Department shall send a certified letter to the operation:

- (a) The owner/operator has 30 days to respond by written request for a certificate extension for another five (5) years.
- (b) If no response is received the operation's certification shall expire on the expiration date.
- (c) The owner/operator shall continue to meet all requirements of the original certification to receive the extension.

(i) review of workbook(s) requirements shall be made by a planner(s);

(ii) verification by the Department as required in R64-3-3(3-7); and

(iii) Owner/operator shall pay certification fee as stated in R64-3-3(10).

(2) If any requirement is found in non-compliance, the planner(s) shall review with the owner/operator what action(s) shall be met for the operation to retain certification.

(a) The owner/operator shall have 120 days to meet the request in order to maintain Program certification in that sector.

(b) If the request is not met, the sign shall be removed by the owner/operator and returned to the Department.

(3) If the operation is certified in more than one sector only the sector in which they are in non-compliance shall the certification be revoked and the sign removed and returned to the Department.

Investigation and/or revocation of certification:

(4) Planner(s) and the Department shall have access to review records on site and make site visits during normal business hours:

(a) The Department shall make every effort to notify the operation prior to the visit.

(5) If any requirement is found in non-compliance, the planner(s) shall review with the owner/operator what action(s) shall be met for the operation to retain certification.

(a) The owner/operator shall have 120 days to meet the request to maintain Program certification in that sector

(b) If the request is not met, the sign shall be removed by the owner/operator and returned to the Department.

(6) If the operation is certified in more than one sector only the sector in which they are in non-compliance shall the certification be revoked and the sign removed and returned to the Department.

(7) Owner/operator may request a variance by notifying the Commission Chair, in writing, stating the reason they could not comply within the 120 days.

(8) The Commission Chair has 30 days to respond, in writing, to the request.

(9) Prior to the ten (10) year termination date of a certificate, the Department shall send a certified letter to the operation. Re-certification shall require the completion of requirements in a current ACES workbook(s) and verification as required in R64-3-3(3-7) and fee according to R64-3-3(10).

(10) Investigation: The Department shall review any complaints/concerns received.

(a) The Department shall contact the planner(s) who certified the operation, and they shall investigate the complaint/concern. If the planner(s) is not available the Department shall contact another planner(s).

(b) If the complaint/concern is not found to be a significant violation of the certification program then the reason for such determination shall be documented in a letter to the owner/operator and no action will be taken.

(i) Planner(s) may make recommendations to correct the concern.

(c) If it is determined that a significant violation has

occurred.

(i) Department shall report the operation to the Commission Chair.

(ii) Commission chair shall then take the following actions:

(A) Inform the commission, and

(B) Make a list of corrective actions necessary and establish time frame for compliance to address the complaint and still maintain certification.

(11) The Commission Chair shall then inform the operation by certified letter of corrective action(s) and time frame for compliance.

(12) If the certified operation does not comply within the time frame specified to rectify the concerns stated in the commission's letter.

(a) The Department shall make a report to the Commission stating reasons for non-compliance.

(13) Commission shall review Department reports and may revoke certification.

(a) If certification is revoked the owner/operator shall remove the sign and return it to the Department, and certification fee shall not be refunded;

(i) The operation shall not be allowed to participate in the ACES Program for two (2) years.

(14) If an operation denies the Department access to a site visit and/or review of records the Commission shall revoke the certification.

(15) If the operation is sold and/or under new management, the current certification shall be revoked.

(a) The Sign shall be removed and returned to the Department.

(16) The new Owner/operator shall:

(a) inform the Department of the change in writing;

(b) go through the certification process with a current workbook(s) as required in R64-3-3(3-7) to become certified; and

(c) pay the fee according to R64-3-3(10).

(17) The Department shall give a yearly report on the ACES Program to the Commission.

**R64-3-5. Requirements and Procedures for the Commission to Administer the ACES Program.**

(1) In approving a planner for the ACES Program the Commission shall consider the following:

(a) NRCS certification in the sector(s) and/or area(s) of the workbook(s) being reviewed, and/or a Technical Service Provider (TSP) approved by NRCS in the sector(s) and/or area(s) of the workbook(s) being reviewed, and Grazing Improvement Program Coordinator(s), and

(b) training on the ACES Program from the Department

(i) at least every five (5) years, and

(ii) when changes are made to the workbook(s).

(2) The Commission shall provide a list of approved planners on the ACES website (<http://ag.utah.gov/aces/index.html>).

Variance

(3) The Commission shall consider the following in determining a variance:

(a) the reasons for granting a variance:

(i) insufficient time to complete the necessary improvement(s);

(ii) consideration of the effect the season has on the improvement(s); and

(iii) economic factors determined by the availability of funds.

**KEY: environment, stewardships, certifications  
May 8, 2014**

**Notice of Continuation April 30, 2019**

**4-18-107**

**R65. Agriculture and Food, Marketing and Development.**  
**R65-12. Utah Small Grains and Oilseeds Marketing Order.**  
**R65-12-1. Authority.**

A. Promulgated under authority of Subsection 4-2-103(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the small grains and oilseeds producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the registered producers and handlers voting on the referendum. It is therefore ordered by the Commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah small grains and oilseed industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

**R65-12-2. Definition of Terms.**

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Small grains and oilseeds" means wheat, barley, safflower, canola and any other small grain or oilseed produced or to be produced in Utah.

D. "Producer" means a person owning or leasing cropland consisting of at least 40 acres producing grain and/or oilseed.

E. "Registered producers" means producers who meet the minimum threshold of producing at least 40 acres of grain and/or oilseed for registration to vote on the referendum and have indicated that they want to be included in the marketing order voting process by certifying their eligibility to vote in the referendum.

F. "Handler" means an individual or an organization that purchases small grains or oilseed products.

G. "Purchase" means payment made to a producer by an individual or other entity.

**R65-12-3. Board.**

A. The Utah Small Grains and Oilseeds Board is hereby established consisting of five members of the small grains and oilseeds industry (no more than 2 individuals from the same county can serve simultaneously), plus up to two ex-officio non-voting members from Utah State University, the Utah Department of Agriculture and Food or farm organization of the Board's choice. An ex-officio non-voting member can serve as Secretary for the Board.

B. The original members of the Board shall be selected by the Commissioner.

C. Successors to original members shall be appointed by the Commissioner. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years without a break in term of at least one year.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah small grains and oilseeds producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Small Grains and Oilseeds Marketing Board,

3. to support, fund and/or conduct educational programs and advertising to promote grains, oilseeds and their products.

4. to support and/or fund research projects to improve the profitability of the Utah small grains and oilseeds industry.

5. to engage in any activity to promote the Utah small grains and oilseeds industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least once annually and more often as deemed necessary by the Board.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for members of the industry by the Small Grains and Oilseed Marketing Board.

**R65-12-4. Provisions of the Order.**

A. This order provides for:

1. Grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for small grains and oilseeds products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of grain and oilseed products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the small grains and oilseeds industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per bushel of wheat sold (after all dockage has been deducted), and up to 10 cents per hundred weight on barley, safflower and canola sold (after all dockage has been deducted), to the Board quarterly. The discretionary assessment shall be set by majority vote of the Board, and approved by the Commissioner. The initial assessment shall be 3.5 cents per bushel on wheat and 7 cents per hundred weight on barley safflower and canola. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of the product. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. Only grains and oilseeds produced in Utah shall be assessed. The assessment of each producer shall be deducted from the producer's gross receipt by the purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Small Grains and Oilseeds Board. Failure of a

purchaser or handler to collect and submit the assessment to the Board will result in a penalty to the purchaser or handler of two times the assessment amount. A purchaser or handler who collects the assessment but fails to submit payment to the Board is subject to a penalty equal to three times the assessment amount.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Handlers may be audited on a random basis as deemed necessary by the Board with results included in the annual audit. Copies of the annual audit shall be available to any contributor upon request.

4. The Board is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to this Order. Any funds remaining at the end of any year over and above the necessary expenses of said Board may be carried over to the next year, or divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year. If carry over funds exceed \$300,000 at the end of any fiscal year, with the Commissioner's approval, the Board may suspend assessments of funds for the ensuing year or longer if deemed appropriate.

6. The Order shall become operational only if it is approved by at least 50 percent of the registered and certified producers and handlers voting in the referendum.

**R65-12-5. Board - Member's Liability.**

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

**R65-12-6. Complaints for Violations - Producer.**

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

**R65-12-7. Termination of Order.**

The Commissioner may terminate the Marketing Order at such time as he/she may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

**R65-12-8. Annual Meeting.**

The Board shall meet at least annually and as often as the Board deems necessary.

**KEY: promotions**

**April 16, 2014**

**Notice of Continuation April 11, 2019**

**4-2-103(1)(e)**

**R131. Capitol Preservation Board (State), Administration.**  
**R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.**

**R131-13-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

**R131-13-2. Authority.**

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

**R131-13-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(d) "State" means the state of Utah.

**R131-13-4. Applicability of Rule.**

(1) Except as provided in Subsection R131-13-4(2) or R131-13-4(3) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, on behalf of the Board, on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract; and

(b) applies to a subcontractor if the subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.

(2) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R131-13 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

**R131-13-5. Contractor and Subcontractors to Comply with Section 63C-9-403.**

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

(2) If a subcontractor of the contractor is subject to Section 63C-9-403(2) or Rule R131-13-4, the contractor shall:

(a) Place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the

subcontract; and

(b) certify to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

**R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.**

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this Rule R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

**R131-13-7. Requirements and Procedures a Contractor Must Follow.**

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. A Contractor (including Design Professional) shall demonstrate compliance with Section 63C-9-403(5) (a) or (b) at the time of execution of each initial contract described in Section 63C-9-403(2).

(a) The compliance is subject to an audit by the Department (Capitol Preservation Board) or the Office of the Legislative Auditor General.

(b) A Contractor (including Design Professional) subject to Section 63C-9-403(2) shall demonstrate to the executive director that the Contractor has and will maintain an offer of qualified health insurance coverage for the Contractor's employees and employees' dependents.

(c) Such demonstration shall be a certification on the form provided by the executive director. The form shall also require compliance with R131-13-5(2) regarding subcontractors.

(d) The actuarially equivalent determination required for the qualified health insurance coverage is met by the Contractor if the Contractor provides the executive director with a written statement of actuarial equivalency attached to the certification, which is not more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. The Contractor is responsible for collecting the statements as required by law from any of the subcontractors at any tier that must do so.

(2) For purposes of this Rule R131-13-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 63C-9-403(1)(c) that is provided by the department of Health, in accordance with Subsection 26-40-115(2).

(3) The health insurance must be available upon the first day of the calendar month following sixty days from the date of hire.

(4) Any contract subject to this Rule R131-13 shall contain a provision requiring compliance with this Rule R131-13 from the time of execution and throughout the duration of the contract.

(5) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a

suspension or debarment.

(b) Penalties that may be imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Subsections (2) through (9) of 63C-9-403 include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of Section 63C-9-403 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Rule R131-13-7(5)(c)(i) as provided in Subsection 63C-9-403(7)(a)(ii). An employee has a private right of action only against the employee's employer to enforce the provisions of Subsection 63C-9-403(7).

**R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.**

Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts**  
**November 21, 2016** **63C-9-403**  
**Notice of Continuation April 17, 2019** **63C-9-301(3)(a)**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.**  
**R156-15A-101. Title.**

This rule is known as the "State Construction Code Administration and Adoption of Approved State Construction Code Rule".

**R156-15A-102. Definitions.**

In addition to the definitions in Title 15A, as used in Title 15A or this rule:

(1) "Advisory Board" or "LUEDAB" mean the Land Use and Eminent Domain Advisory Board created under Section 13-43-202.

(2) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(3) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), fees assessed by a state agency or state political subdivision for the issuance of permits for construction, alteration, remodeling, repair, and installation, including building, electrical, mechanical and plumbing components.

(4) "Ombudsman" means the Office of the Property Rights Ombudsman created under Section 13-43-201.

(5) "Permit number", as used in Section 15A-1-209, means the standardized building permit number described below in Sections R156-15A-220 and R156-15A-221.

(6) "Refuses to establish a method of appeal" means, with respect to Subsection 15A-1-207(3)(b), that:

(a) a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or

(b) that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

**R156-15A-103. Authority.**

This rule is adopted by the Division under the authority of Subsection 15A-1-204(6), Section 15A-1-205 and Subsection 58-1-106(1)(a) to enable the Division to administer Title 15A.

**R156-15A-201. Advisory Peer Committees Created - Membership - Duties.**

(1) There is created in accordance with Subsections 58-1-203(1)(f) and 15A-1-203(10)(d), the following advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of ten members, which shall include a factory built housing representative, a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board, or as directed by the

Uniform Building Code Commission, or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act as chair and another to act as vice chair. The chair and vice chair shall serve for one-year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Subsection 15A-1-203(10)(d). The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in that committee.

(3) The duties and responsibilities of the committees shall include:

(a) reviewing codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) reviewing requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission; and

(c) submitting recommendations concerning the reviews made under Subsection (a) and (b).

(4) The duties and responsibilities of the Education Advisory Committee shall include:

(a) reviewing and making recommendations regarding funding requests that are submitted; and

(b) reviewing and making recommendations regarding budget, revenue and expenses of the education funds established pursuant to Subsection 15A-1-209(5)(c)(i) and (ii).

**R156-15A-202. Code Amendment Process.**

In accordance with Section 15A-1-206, the procedure and manner under which requests for amendments to codes shall be filed with the Division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the adopted codes or approved codes shall be submitted to the Division on forms specifically prepared by the Division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with Division policies and procedures.

**R156-15A-210. Compliance with Codes - Appeals.**

If the Commission is required to act as an appeals board in accordance with the provisions of Subsection 15A-1-207(3)(b), the following shall regulate the convening and conduct of the appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appellant may petition the Commission to act as the appeals board.

(2) The appellant shall file the request to convene the Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Sections R151-4-202 and R151-4-203. A request by other means shall not be considered and shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request.



If the appellant requests, but does not receive a timely final written decision, the appellant shall submit an affidavit to this effect in lieu of including a copy of the final written decision with the request.

(4) The request shall be filed with the Division no later than 30 days following the issuance of the compliance agency's disputed written decision.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the appeal. If it is determined that a conflict does exist, the member shall be excused from participating in the proceeding.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require Commission approval.

#### **R156-15A-220. Standardized Building Permit Number.**

As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system in a form adopted by rule. There are no additional requirements to those specified in Subsection 15A-1-209.

#### **R156-15A-230. Building Code Training Fund Fees and Factory Built Housing Fees.**

(1) In accordance with Subsection 15A-1-209(5)(a), on April 30, July 31, October 31 and January 31 of each year, each state agency and each state political subdivision that assesses a building permit fee shall:

(a) file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and

(b) remit 85% of the amount of the surcharge collected to the Division.

(2) In accordance with Subsection 15A-1-209(5)(c), the Division shall allocate and deposit the monies received under Subsection 15A-1-209(5)(a)(ii) into the following three separate funding accounts:

(a) 30% to the Division's Building Code Inspector Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to building inspectors;

(b) 10% to the Division's Building Code Construction-Related Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to individuals licensed in construction trades or related professions; and

(c) 60% to the Ombudsman's Land Use Fund, to be held, administered, and distributed pursuant to Section R156-15A-232 to provide education and training regarding:

(i) the drafting and application of land use laws and regulations; and

(ii) land use dispute resolution.

(3) In accordance with Subsection 58-56-17.5(2)(c), the Division shall hold, administer, and distribute a portion of the monies in the Factory Built Housing Fees Account pursuant to Section R156-15A-231 to provide education for factory built housing.

#### **R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account.**

In accordance with Subsections 15A-1-209(5)(c) and 58-56-17.5(2)(c), and Section R156-15A-230, the following procedures, standards, and policies are established to apply to the administration of the Building Code Inspector Training Fund, the Building Code Construction-Related Training Fund, and the Factory Built Housing Fees Account:

(1) The Division shall not approve or deny education grant requests from any separate fund or account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) for the Building Code Inspector Training Fund or the Factory Built Housing Fees Account, grants in the form of reimbursement funding to the following organizations that administer code-related training or factory built housing educational events, seminars, or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) construction trade associations;

(iii) professional associations or organizations; and

(iv) governmental agencies;

(b) for the Building Code Construction-Related Training Fund, grants in the form of reimbursement funding to the following organizations that administer code-related training events, seminars, or classes:

(i) construction trade associations; or

(ii) professional associations;

(c) costs or expenses incurred as a result of code events, seminars, or classes directly administered by the Division;

(d) expenses incurred for the salary, benefits, or other compensation and related expenses resulting from the employment of a Board Secretary;

(e) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(f) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review, and payment of funding grants:

(a) A funding grant applicant shall submit a completed application on forms provided for that purpose by the Division, at least 15 days prior to the meeting at which the request is to be considered, and prior to the training event. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants shall be made as reimbursement after:

(i) the approved event, class, or seminar has been held; and

(ii) the required receipts, invoices, and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(d)(i) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar, unless an

extenuating circumstance occurs. Written notice shall be given to the Division of such an extenuating circumstance.

(ii) Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including:

- (i) the need for training on the subject matter;
- (ii) the need for training in the geographical area where the training is offered; and
- (iii) the need for training on new codes being considered for adoption;

(b) whether the grant applicant agrees to charge a cost for the training event, class, or seminar which is uniform across all categories of attendees;

(c) the prior record of the program sponsor in providing codes training, including:

- (i) whether the subject matter taught was appropriate;
- (ii) whether the instructor was appropriately qualified and prepared; and
- (iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(d) costs of the facility, including:

- (i) the location of a facility or venue, or the type of event, seminar, or class;
- (ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;
- (iii) the duration of the proposed event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(e) the estimated cost for instructor fees, including:

- (i) a reimbursement rate not to exceed \$150 per instruction hour without further review and approval by the Committee;
- (ii) the experience or expertise of the instructor in the proposed training area;
- (iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar, or class;

(v) travel expenses; and

(vi) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar events, seminars, or classes;

(f) the estimated cost of advertising materials, brochures, registration, and agenda materials, including:

- (i) printing costs that may include creative or design expenses;
- (ii) whether printed materials comply with Subsection (4)(b); and
- (iii) delivery or mailing costs;
- (g) other reasonable and comparable cost alternatives for each proposed expense item;
- (h) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and
- (i) a total reimbursement rate of the lesser of \$10 per student hour or the cost of all approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee, based upon the criteria in Subsection (4), may reimburse the following items in addition to the lesser of \$10 per student hour or the cost of all approved actual expenditures:

(a) text books, code books, or code update books;

(b) cost of one Division licensee mailing list per provider per two-year renewal period;

(c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians, or elevator mechanics; and

(d) reasonable cost of advertising materials, brochures, registration and agency materials, including:

- (i) printing costs that may include creative or design expenses; and
- (ii) delivery or mailing costs.

(6) Joint function.  
(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code-related training or factory built housing education, and education or activities in other areas.

(b) Only the prorated portions of a joint function that apply to the purposes of a separate fund are eligible for a funding grant from that fund.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

- (i) the expenses subject to funding are reasonably prorated for the costs directly related to the purposes of the separate fund; and
- (ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures, and agenda or training materials for a Building Code Training funded event, seminar, or class shall include a statement that acknowledges that partial funding of the program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(8) Advertising materials, brochures, and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable except for the costs described in Subsection (5)(d).

#### **R156-15A-232. Administration of the Office of the Property Rights Ombudsman's Land Use Fund.**

In accordance with Subsection 15A-1-209(5)(c)(iii) and Section R156-15A-230, the following procedures, standards, and policies are established for the administration of the Ombudsman's Land Use Fund:

(1)(a) The Ombudsman shall use the Land Use Fund to pay its expenses, including personnel salaries, course development costs, travel, and other related expenses as agreed upon by the Ombudsman and the Department of Commerce, that are incurred as a result of:

- (i) administering the Land Use Fund;
- (ii) conducting training activities under Subsection 13-43-203(1)(g); and
- (iii) creating, compiling, and updating model land use ordinances.

(b) Expenses paid to the Ombudsman under this Subsection (1) shall first be approved by:

- (i) the Advisory Board; and
- (ii) the Department's executive director.

(2) The Ombudsman shall use the Land Use Fund to provide grants to providers of land use training programs, as follows:

- (a) Eligibility Criteria.
- (i) To be eligible to receive funds, the provider's program

shall primarily provide training on Utah land use law, and in particular the drafting and application of land use laws and regulations.

(ii) Program training may take the form of live or prerecorded seminars or lectures, continuing education programs, video production, or development and distribution of training materials and written information.

(iii) The following factors shall apply to the consideration of whether to approve, approve with conditions, or deny a grant request:

(A) previous experience in providing training;  
 (B) cost estimates, including cost-per-attendee estimates;  
 (C) how well the education fits in with the land use education and training objectives of Subsection 13-43-203(1)(i)(i);

(D) whether the training addresses current Utah land use law, issues, and best practices;

(E) how well the text relates to the course objectives;

(F) the target audience - for example, whether the education is targeted for land use officials such as commissioners, council members, etc.;

(G) the expected number of students, hours of instruction, and the ratio of students per dollar spent;

(H) the location or region of the state targeted by the education;

(I) the percentage of training costs paid for by the student;

(J) any other considerations deemed important by the Advisory Board, the Ombudsman, and the Department; and

(K) available funds.

(b) Reimbursement Criteria.

(i) Funds may be expended only as reimbursement for expenditures incurred in providing land use training.

(ii) Reimbursement for instructor fees shall be limited to \$150 per hour per instructor and to \$3,000 total for all instructors per day, including travel and meals. Any excess instructor fees, including honoraria for keynote speakers, shall require further justification, review, and approval. Instructor fees may not be paid to State or local government employees if the instructor is also being paid wages for the same time period.

(iii) Reimbursement for instructor meals, mileage, and lodging may not exceed current State of Utah rates for mileage and daily travel per diem.

(iv) Reimbursement for other expenses such as workbooks, study guides, textbooks used in the education course, meeting rooms or facilities, audio/visual equipment rental costs, if needed, printing costs, advertising and publication costs, and mailing, postage and handling costs, shall be approved as needed.

(v) Programs that charge a fee to attendees are eligible for reimbursement on a net cost basis after subtracting collected student fees and sponsorships. Any items that do not qualify for State funding shall be paid for by the participant or sponsor of the program.

(vi) The Ombudsman, Land Use Fund manager, and the Department may in their joint discretion grant approval based upon a total per student reimbursement rather than an actual cost reimbursement.

(c) Procedures for the submission, review, and payment of funding grants shall be as follows:

(i) A funding grant applicant shall submit a completed Request for Land Use Training Funds application to the Ombudsman on a form provided for that purpose by the Ombudsman. The application shall require a description of the proposed land use training program, including program objectives, instructors, target audience, and budget, and may encompass other criteria including that set forth in Subsection (2)(a).

(ii) The Ombudsman shall submit the completed Request for Land Use Training Funds application to the Advisory Board

for selection or proposal by the Advisory Board. The submission, selection, or proposal may be done in person or by electronic means in accordance with Title 63G.

(iii) A Request for Land Use Training Funds application selected or proposed by the Advisory Board shall then be reviewed by the Ombudsman's director, the Land Use Fund's manager, and the Department's executive director, or their designees. They may jointly approve the application, approve the application with conditions, or deny the application.

(iv) To apply for reimbursement based on an approved Request for Land Use Training Funds application, the approved program shall submit one or more completed Request for Reimbursement forms to the Ombudsman as follows:

(A) The Request for Reimbursement shall be on a form provided by the Ombudsman for that purpose, and shall include receipts, invoices, and supporting documentation of expenditures, including proof of payment if requested by the Ombudsman or the Department of Commerce.

(B) The complete Request for Reimbursement shall be submitted within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice shall be given to the Ombudsman of such an extenuating circumstance. Failure to submit a complete Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Ombudsman.

(v) A Request for Reimbursement accepted by the Ombudsman for review shall then be reviewed by the Ombudsman director, the Land Use Fund manager, and the Department executive director or their designees, and may be approved, approved with conditions, or denied.

(vi) Reimbursement funds may be paid only:

(A) for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value; and

(B) pursuant to a Request for Reimbursement form that has been signed as approved by the Ombudsman director, the Land Use Fund manager, and the Department executive director, or their designees.

#### **R156-15A-401. Adoption - Approved Codes.**

Approved Codes. In accordance with Subsection 15A-1-204(6)(a), and subject to the limitations contained in Subsection 15A-1-204(6)(b), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation, and rehabilitation in the state:

(1) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(2) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(3) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.

**KEY: contractors, building codes, building inspections, licensing**

**April 8, 2019**

**Notice of Continuation June 20, 2016**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**15A-1-204(6)**

**15A-1-205**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-55e. Elevator Mechanics Licensing Rule.**  
**R156-55e-101. Title.**

This rule is known as the "Elevator Mechanics Licensing Rule."

**R156-55e-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Employee", as used in Subsection 58-55-102(18) and this rule, means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

(2) "Immediate supervision", as used in Subsection 58-55-102(26) and this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with the applicable standards.

(3) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55e-502.

**R156-55e-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

**R156-55e-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

**R156-55e-302a. Qualifications for Licensure - Experience and Education Requirements.**

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements in Subsections 58-55-302(1)(e)(iv)(C) and 58-55-302(3)(m)(i)(A) and (C) are further clarified and established below.

(1)(a) The required three years of experience and education shall mean 6,000 hours of training.

(b) An applicant may earn no more than 2,000 hours of training in any 12-month period.

(c) The required training shall be within the past ten years from the date of application for licensure.

(d) The required training shall be obtained as an employee working:

(i) under the immediate supervision of a licensed elevator contractor where licensure is required; or

(ii) under an employer meeting similar qualifications as those of a licensed elevator contractor where licensure is not required.

(e) No credit shall be given for training obtained illegally.

(2) The requirements of Subsection (1) may be met by completing a program resulting in the award of a certification from:

(a) the Canadian Elevator Industry Education Program;

(b) the National Association of Elevator Contractors Certified Elevator Technician Education Program;

(c) the National Elevator Industry Education Program; or

(d) any other program that meets the requirements of Subsection 58-55-302(3)(m)(i)(C) as determined by the Commission with the concurrence of the Division Director.

**R156-55e-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-55-302(3)(m)(i)(B), an applicant for licensure as an elevator mechanic shall:

(a) pass the Utah Elevator Examination with a score of not

less than 75%; or

(b) complete one of the following certification programs:

(i) the Canadian Elevator Industry Education Program;

(ii) the National Association of Elevator Contractors Certified Elevator Technician Education Program;

(iii) the National Elevator Industry Education Program; or

(iv) any other program that meets the requirements of Subsection 58-55-302(3)(m)(i)(C) as determined by the Commission with the concurrence of the Division Director.

(2) An applicant for licensure who fails the Utah Elevator Examination may retake the failed examination as follows:

(a) no earlier than 30 days following any failure, up to three failures; and

(b) no earlier than six months following any failure thereafter.

**R156-55e-302c. Qualifications for Licensure - Temporary License Requirements.**

(1) The Division may issue a temporary license when:

(a) a licensed elevator contractor notifies the Division that the contractor cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, which is confirmed by the Division;

(b) the contractor requests the Division to issue a temporary elevator mechanic license to an individual;

(c) the individual submits an application for temporary licensure accompanied by the appropriate application fee; and

(d) the contractor certifies that the individual has completed 3,550 hours of training that meets the requirements of Section R156-55e-302a.

(2) The expiration date of the temporary license shall be the expected duration of the shortage of licensed elevator mechanics, but shall not exceed 180 days.

(3) A temporary license may be renewed if a shortage of elevator mechanics is ongoing on the expiration date of the license, but shall not exceed 180 days.

**R156-55e-303. Renewal Cycle - Procedure.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Subsection R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

**R156-55e-303a. Continuing Education - Standards.**

(1) Required Hours. Pursuant to Subsection 58-55-302.7(2)(c), each licensee shall complete eight hours of continuing education during each two year license term.

(2) "Approved continuing education" is defined as:

(a) elevator codes, construction, government regulations, maintenance, and new technology; and

(b) OSHA 10 or OSHA 30 safety training, or other safety training as it pertains to the elevator trade.

(3) Non-acceptable course subject matter shall include the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(4) The Division may:

(a) waive the continuing education requirements for a licensee who is an instructor of an approved apprenticeship

program; and

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(5) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the elevator trade.

(c) Content. The content of the course shall be relevant to the practice of the elevator trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through home study courses provided the course verifies registration and participation in the course by means of passing a test which demonstrates that the participant has learned the material presented. Test questions shall be random for each internet participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(6) On a random basis, the Division may assign monitors at no charge to attend a course for the purposes of evaluating the course and the instructor.

(7) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (10). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(8) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(9) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the

continuing education requirement for that renewal cycle.

(10) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(12) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

#### **R156-55e-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing to carry a copy of a current license at all times when performing work as an elevator mechanic; and

(2) failing to display a copy of a current license upon request to a representative of the Division or a representative of a governmental entity enforcing criminal, building, or safety codes.

#### **R156-55e-503. Administrative Penalties.**

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted and incorporated by reference.

#### **KEY: elevator mechanics, licensing**

**April 22, 2019**

**Notice of Continuation September 14, 2015**

**58-1-106(1)(a)**

**58-1-202(1)(a)**

**58-55-101**

**58-55-308(1)(a)**

**58-55-302(3)(m)**

**R277. Education, Administration.****R277-400. School Facility Emergency and Safety.****R277-400-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; and
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
- (a) establish general criteria for emergency preparedness and emergency response plans; and
- (b) direct an LEA to:
- (i) develop prevention, intervention, and response measures; and
- (ii) prepare staff and students to respond promptly and appropriately to school emergencies.

**R277-400-2. Definitions.**

- (1) "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance that could reasonably endanger the safety of school children or disrupt the operation of the school.
- (2) "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.
- (3) "Emergency Response Plan" means a plan developed by an LEA or a school to prepare and protect students and staff in the event of school violence emergencies.
- (4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (5) "Plan(s)" means an LEA's or a school's emergency preparedness and emergency response plan.

**R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.**

- (1) By July 1 of each year, an LEA shall certify to the Superintendent that the LEA's emergency preparedness and emergency response plan has been:
- (a) practiced at the school level; and
- (b) presented to and reviewed by its teachers, administrators, students and guardians, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).
- (2) An LEA shall reference the LEA's Emergency Response plan as part of an LEA's annual application for state or federal Safe and Drug Free School funds.
- (3)(a) An LEA's plans shall be designed to meet individual school needs and features.
- (b) An LEA may direct schools within the LEA to develop and implement individual plans.
- (4)(a) An LEA shall appoint a committee to prepare or modify plans to satisfy this Rule R277-400 and Section 53G-4-402(18).
- (b) The committee shall consist of appropriate school and community representatives, which may include:
- (i) school and LEA administrators;
- (ii) teachers;
- (iii) parents;
- (iv) community and municipal governmental officers; and
- (v) fire and law enforcement personnel.
- (c) The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.
- (5) An LEA shall review plans at least once every three years.

- (6) The Superintendent shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

**R277-400-4. Notice and Preparation.**

- (1) Each school shall file a copy of plans required by this Rule R277-400 with the LEA superintendent or charter school director.
- (2) At the beginning of each school year, an LEA or school shall provide a written notice to parents and staff of sections of an LEA's and school's plans that are applicable to that school.
- (3) A school shall designate an Emergency Preparedness/Emergency Response week each year before April 30 which shall have activities that may include:
- (a) community, student and teacher awareness;
- (b) emergency preparedness or response training; or
- (c) other activities as outlined in Sections R277-400-7 and 8.
- (4) A school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

**R277-400-5. Plan Content--Educational Services and Student Supervision and Building Access.**

- (1) An LEA's or a school's plan shall include:
- (a) procedures to ensure reasonably adequate educational services and supervision are provided for during an emergency including an extended emergency situation;
- (b) evacuation procedures that provide reasonable care and supervision of a student until the student is released to a responsible party.
- (i) An LEA or school shall not release a student who is under 15 years old unless a parent or other responsible person has been notified and assumed responsibility for the student.
- (ii) A school official may release a student who is 15 years old or older without such notification if authorized by the LEA or school and the school official determines:
- (A) the student is reasonably responsible; and
- (B) notification is not practicable.
- (c)(i) as determined by a local board or governing authority, procedures regarding access to public school buildings by:
- (A) students;
- (B) community members;
- (C) lessees;
- (D) invitees; and
- (E) others.
- (ii) procedures regarding access:
- (A) may include restricted access for some individuals;
- (B) shall address building access during identified time periods; and
- (C) shall address possession and use of school keys by designated administrators and employees.
- (d) resources and materials available for emergency training for an LEA's employees.

**R277-400-6. Emergency Preparedness Training for School Occupants.**

- (1) An LEA's or a school's plan shall provide procedures for a student to receive age appropriate emergency preparedness training including:
- (a) rescue techniques;
- (b) first aid;
- (c) safety measures appropriate for specific emergencies; and
- (d) other emergency skills.
- (2) During each school year, an elementary school shall conduct emergency drills at least once each month during

school time.

(3) An LEA shall alternate one of the following practices or drills with required fire drills:

- (a) shelter in place;
- (b) earthquake;
- (c) lock down or lock out for violence;
- (d) bomb threat;
- (e) civil disturbance;
- (f) flood;
- (g) hazardous materials spill;
- (h) utility failure;
- (i) wind or other types of severe weather;
- (j) parent and student reunification;
- (k) shelter and mass care for natural and technological hazards; or

(l) an emergency drill appropriate for the particular school location.

(4)(a) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes.

(b) An LEA or a school may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

(5) Each school shall have one fire drill in the first 10 days of the regular school year and one fire drill every other month during the school year.

(6) A secondary school shall conduct all drills in accordance with Section 15A-5-202.5

(7) An LEA shall notify the local fire department prior to each fire drill if notice is required by the local fire chief.

(8) When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.

(9) Schools that include both elementary and secondary grades in the school shall comply with the elementary emergency drill requirements.

(10) In cooperation with the LEA's local law enforcement agency, an LEA shall:

- (a) establish a parent and student reunification plan for each school within the LEA;
- (b) as part of the LEA's registration and enrollment process, annually provide parents a summary of parental expectations and notification procedures related to the LEA's parent and student reunification plan; and
- (c) require each school within the LEA to publish the information described in Subsection (12)(b) on the school's website.

#### **R277-400-7. Emergency Response Review and Coordination.**

(1) For purposes of emergency response review and coordination an LEA shall:

- (a) provide an annual training for LEA and school building staff regarding an employee's roles, responsibilities, and priorities in the emergency response plan.
- (b) require a school to conduct at least one annual drill for school emergencies in addition to the drills required under Section 15A-5-202.5 and R277-400-6 by October 1.
- (c) require a school to review existing security measures and procedures within the school and make necessary adjustments as funding permits.
- (d) develop standards and protections for participants and attendees at school-related activities, especially school-related activities off school property.

(2) An LEA or school shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

#### **R277-400-8. Prevention and Intervention.**

(1) An LEA shall provide a school comprehensive

violence prevention and intervention strategies as part of a school's regular curriculum including:

- (a) resource lessons and materials on anger management;
- (b) conflict resolution; and
- (c) respect for diversity and other cultures.

(2) As part of a violence prevention and intervention strategy in subsection (1), a school may provide age-appropriate instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

(3) An LEA shall also develop student assistance programs including:

- (a) care teams;
- (b) school intervention programs; and
- (c) interagency case management teams.

(4) In developing student assistance programs, an LEA may coordinate with other state agencies and the Superintendent.

#### **R277-400-9. Cooperation With Governmental Entities.**

(1) As appropriate, an LEA may enter into cooperative agreements with other governmental entities to establish proper coordination and support during emergencies.

(2)(a) An LEA shall cooperate with other governmental entities to provide emergency relief services.

(b) An LEA's or a school's plans shall contain procedures for assessing and providing the following for public emergency needs:

- (a) school facilities;
- (b) equipment; and
- (c) personnel.

(3) A plan shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(a) The Superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance; and

(b) A local governing board, through its superintendent or director, is the chief officer for an LEA emergencies.

#### **R277-400-10. Fiscal Accountability.**

(1) An LEA or a school plan shall address procedures for recording an LEA's funds expected for:

- (a) emergencies;
- (b) assessing and repairing damage; and
- (c) seeking reimbursement for emergency expenditures.

#### **R277-400-11. School Carbon Monoxide Detection.**

(1) A new educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 915 through 915.4.5

(2) An existing educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

(3) Where required, an LEA shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 915.1.

(4) An LEA shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

(5) An LEA shall install each carbon monoxide detection system in the locations specified in NFPA 720.

(6) A combination carbon monoxide smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

(7)(a) Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is

served from a commercial source.

(b) If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power.

(c) The wiring for a carbon monoxide detection system shall be permanent and without a disconnecting switch other than that required for over-current protection.

(8) An LEA shall maintain all carbon monoxide detection systems consistent with IFC 915 and NFPA 720.

(9) Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.5.6.

(10) An LEA shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

(11) An LEA shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

**KEY: carbon monoxide detectors, emergency preparedness, disasters, safety education**

**April 8, 2019**

**Notice of Continuation February 8, 2019**

**Art X Sec 3**

**53E-3-401(4)**

**53G-4-402(1)(b)**



**R277. Education, Administration.****R277-407. School Fees.****R277-407-1. Authority and Purpose.**

(1) This rule is authorized under:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Article X, Section 2 of the Utah Constitution, which provides that:

(i) public elementary schools shall be free; and

(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and

(e) Subsection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.

(2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(3) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would:

(i) exclude those unable to pay from participation in school-sponsored activities; or

(ii) create a burden on a student or family as to have a detrimental impact on participation.

**R277-407-2. Definitions.**

(1) "Co-curricular activity" means an activity, course, or program, outside of school hours, that also includes a required regular school day program or curriculum.

(2) "Extracurricular activity" means an activity or program for students, outside of the regular school day, that:

(a) is sponsored, recognized, or sanctioned by an LEA; and

(b) supplements or complements, but is not part of, the LEA's required program or regular curriculum.

(3)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.

(b) "Fee" includes money or something of monetary value raised by a student or the student's family through fund-raising.

(4)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:

(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or

(ii) benefit a particular charity or for other charitable purposes.

(b) "Fundraiser," "fundraising," or "fundraising activity" may include:

(i) the sale of goods or services;

(ii) the solicitation of monetary contributions from individuals or businesses; or

(iii) other lawful means or methods that use students to generate funds.

(c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.

(5) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the mutual benefit of the group, team, or organization.

(6) "Individual fundraiser" or "individual fundraising"

means a fundraising activity where money is raised by each individual student to pay the individual student's fees.

(7)(a) "Instructional equipment" means equipment or supplies required for a student to use as part of a secondary course that become the property of the student upon exiting the course.

(b) "Instructional equipment" includes course related tools or instruments.

(8) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(9) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.

(10) "Non-waivable charge" means a cost, payment, or expenditure that:

(a) is a personal discretionary charge or purchase, including:

(i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;

(ii) a charge for college credit related to the successful completion of:

(A) a concurrent enrollment class; or

(B) an advanced placement examination; or

(iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;

(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:

(i) a school uniform as provided in Section 53G-7-801;

(ii) a school lunch; or

(iii) a charge for a replacement for damaged or lost school equipment or supplies.

(11)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:

(i) is authorized by an LEA or school, according to local education board policy; or

(ii) satisfies at least one of the following conditions:

(A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee;

(B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, fund-raising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

(12)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.

(13) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

(14) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

(a) fully participate in school or in a school activity, class, or program;

(b) successfully complete a school class for the highest

grade; or

(c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:

- (i) peer pressure, shaming, stigmatizing, bullying, or the like; or
- (ii) withholding or curtailing any privilege that is otherwise provided to any other student.

(15)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

(b) "Something of monetary value" includes:

- (i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;
- (ii) payments made to a third party that provide a part of a school activity, class, or program;
- (iii) classroom supplies or materials; and
- (iv) a fine, except for a student fine specifically approved by an LEA for:

- (A) failing to return school property;
- (B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or
- (C) improper use of school property, including a parking violation.

(16)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

- (i) pencils;
- (ii) paper;
- (iii) notebooks;
- (iv) crayons;
- (v) scissors;
- (vi) basic clothing for healthy lifestyle classes; and
- (vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection (16)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint in order to create a uniform appearance not related to basic function.

(17) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

(18) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

(19)(a) "Textbook" means instructional material necessary for participation in a course or program, regardless of the format of the material.

(b) "Textbook" does not include instructional equipment.

(20) "Waiver" means a full or partial release from the requirement of payment of a fee and from any provision in lieu of fee payment.

### **R277-407-3. Classes and Activities During the Regular School Day.**

(1) No fee may be charged in kindergarten through grade six for:

- (a) materials;

(b) textbooks;

(c) supplies, except for student supplies described in Subsection (6); or

(d) any class or regular school day activity, including assemblies and field trips.

(2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this R277-407.

(b) All fees are subject to the fee waiver provisions of Section R277-407-8.

(3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

(b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

(c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-8.

(5)(a) In project related courses, projects required for course completion shall be free to all students.

(b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

(c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

(d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

(6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(7) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-8.

(8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific color, style, fabric, or imprints, the cost of the special shoes or items of clothing are:

- (a) considered a fee; and
- (b) subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform

policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

**R277-407-4. School Activities Outside of the Regular School Day.**

(1) A school may charge a fee, subject to the provisions of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(3).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the provisions of this rule regardless of the time or season of the activity, class, or program.

**R277-407-5. Fee-Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.**

Fees for the following are waivable:

(1) an activity, class, or program that is:

(a) primarily intended to serve school-age children; and  
(b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;

(2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or  
(b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

(a) travel for state or national educational experiences or competitions;

(b) debate camps or competitions; or

(c) music camps or competitions; and

(5) a concurrent enrollment, CTE, or AP course.

**R277-407-6. LEA Requirements to Establish a Fee Schedule -- Maximum Fee Amounts -- Notice to Parents.**

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or supported by a including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;

(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (3); and

(c) is included in an approved fee schedule or notice in

accordance with this rule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this Section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection(2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e-mail, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3)(a) As part of an LEA's fee setting process, the LEA shall establish a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all courses, programs, and activities provided, sponsored, or supported by a school for the year.

(b) An LEA shall establish:

(i) a maximum fee amount per student for each activity; and

(ii) a maximum total aggregate fee amount per student per school year.

(c) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.

(4) As part of an LEA's fee setting process described in this Section, the LEA may review and consider the following per school:

(a) the school's cost to provide the activity, class, or program;

(b) the school's student enrollment;

(c) the median income of families:

(i) within the school's boundary; or

(ii) enrolled in the school;

(d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;

(e) the historical participation and school interest in certain activities;

(f) the prior year fee schedule;

(g) the amount of revenue collected from each fee in the prior year;

(h) fund-raising capacity;

(i) prior year community donors; and

(j) other resources available, including through donations and fundraising.

(5)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.

(6)(a) If an LEA charges a fee, the LEA shall:

(i) annually publish the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection (3), on each of the LEA's schools' websites;

(ii) annually include a copy of the LEA's fee schedule and

fee waiver policies with the LEA's registration materials; and  
 (iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

(i) the student or parent's first language is a language other than English; and

(ii) the LEA hasn't published the LEA's fee schedule and fee waiver policies in the parent's first language.

(7) A notice described in Subsection (6)(a) shall:

(a) be in a form approved by the Board; and

(b) include the following:

(i) for a school serving elementary students:

(A) School Fees Notice for Families of Children in Elementary School;

(B) Fee Waiver applications (Elementary School);

(C) Fee Waiver Decision and Appeals Form; and

(D) the Board's elementary school poster; and

(ii) for a school serving secondary students:

(A) School Fees Notice For Families of Students in a Secondary School;

(B) Fee Waiver Application (Secondary School);

(C) Application for Fee Waivers and Community Service (Secondary School);

(D) Community Service Assignments and Notice of Appeal Rights;

(E) Appeal of Community Service Assignment; and

(F) the Board's secondary school poster.

(8)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(9)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(10) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

#### **R277-407-7. Donations in Lieu of Fees.**

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to

make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) An LEA may not accept a donation that would create a significant inequity among the schools within the LEA.

#### **R277-407-8. Fee Waivers.**

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), beginning with the 2020-21 school year, an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

(3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with *Doe v. Utah State Board of Education*, Civil No. 920903376 (3rd District 1994).

(10) An LEA shall adopt a fee waiver policy for review

and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive a non-waivable charge.

**R277-407-9. Service in Lieu of Fees -- Voluntary Requests for Installment Plans.**

(1) Subject to the provisions of Subsection (2), an LEA may allow a student to perform community service in lieu of a fee, but community service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform community service in lieu of a fee if:

(a) the LEA establishes a community service policy that ensures that a community service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

(b) the LEA's community service policy is consistent with state and federal laws, including:

(i) Section 53G-7-504; and

(ii) the Federal Fair Labor Standards Act, 29 U.S.C.201;

(c) the community service can be performed within a reasonable period of time; and

(d) the service is at least equal to the minimum wage for each hour of service.

(3)(a) A student who performs community service may not be treated differently than other students who pay a fee.

(b) The community service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's community service credit to:

(a) another school within the LEA; or

(b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5)(a) may not be instigated by the school but must be voluntarily requested by the student or parent.

(6) An LEA that charges fees shall adopt policies that include at least the following:

(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20

U.S.C. 123g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

**R277-407-10. Individual and Group Fundraising Requirements.**

(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.

(2) An LEA's fundraising policy described in Subsection (1):

(a) may not authorize, establish, or allow for required individual fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for group fundraisers;

(d) shall prohibit denying a student membership in or participation on a team or group or in an activity based on the student's non-participation in a fundraiser; and

(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students.

**R277-407-11. Fee Waiver Eligibility.**

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) based on family income, the student qualifies for free school lunch under United States Department of Agriculture child nutrition program regulations;

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(d) An LEA may not subject a family to unreasonable demands for re-qualification.

(3) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(4) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

**R277-407-12. Fees for Textbooks and Remediation.**

(1) Beginning with the 2020-21 school year, an LEA may not charge a fee for:

(a) a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2); or

(b) a remediation course, if, as described in Subsection 53G-7-504(1)(b):

(i) the student or the student's parent is financially unable to pay the fee;

(ii) the fee for remediation would constitute an extreme financial hardship on the student or student's parent; or

(iii) the student has suffered a long-term illness, death in the family, or other major emergency.

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.

(b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

**R277-407-13. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.**

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall:

(a) establish a spend plan for the revenue collected from each fee charged; and

(b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.

(3)(a) Financial inequities or disproportional impact of fee waivers may not fall inequitably on any one school within an LEA.

(b) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

**R277-407-14. Fee Waiver Reporting Requirements.**

(1) An LEA shall attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:

(a) a summary of:

(i) the number of students in the LEA given fee waivers;

(ii) the number of students who worked in lieu of a waiver;

and

(iii) the total dollar value of student fees waived by the LEA;

(b) a copy of the LEA's fee and fee waiver policies;

(c) a copy of the LEA's fee schedule for students; and

(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

**R277-407-15. Superintendent and LEA Policy and Training Requirements.**

(1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

(2) The Superintendent shall provide online training and resources for LEAs regarding:

(a) an LEA's fee approval process;

(b) LEA notification requirements;

(c) LEA requirements to establish maximum fees;

(d) fundraising practices;

(e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and

(f) community service or fundraising alternatives for students and families who qualify for fee waivers.

(3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.

(4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

**R277-407-16. Enforcement.**

(1) The Superintendent shall monitor LEA compliance with this rule:

(a) through the compliance reports provided in Section R277-407-14; and

(b) by such other means as the Superintendent may reasonably request at any time.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of noncompliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.

(4)(a) Within fifteen days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA that failed to respond to a first notice of non-compliance receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) seek an appeal as described in Subsection (8)(b).

(7) If an LEA that failed to respond to a first notice of non-compliance fails to comply with either of the options described in Subsection (6), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Prior to imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA thirty days' notice of any proposed action.

(b) The LEA may, within fifteen days after receipt of a notice described in Subsection (8)(a), request an appeal before the Board.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is

final and no further appeals are provided.

**R277-407-17. Effective Date.**

- (1) This rule will be effective beginning January 1, 2020.

**KEY: education, school fees**

**April 8, 2019**

**Notice of Continuation July 19, 2017**

**Art X Sec 2**

**Art X Sec 3**

**53E-3-401(4)**

**53G-7-503**

**Doe v. Utah State Board of Education, Civil No.  
920903376**

**R277. Education, Administration.****R277-463. Class Size Average and Pupil-Teacher Ratio Reporting.****R277-463-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which places general control and supervision of the public school system under the Board;
  - (b) Section 53E-3-301, which directs the Board to report average class sizes and pupil-teacher ratios; and
  - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish uniform class size and pupil-teacher ratio reporting procedures, including definitions and codes.

**R277-463-2. Definitions.**

- (1) "Course" means the subject matter taught to students.
- (a) Elementary courses are designated by grade level.
  - (b) Secondary courses are determined by course content.
- (2) "EL" means English Learner.
- (3)(a) "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period.
- (b) A class may include:
    - (i) students from multiple grades; or
    - (ii) students taking multiple courses.
  - (c) The Superintendent shall determine an individual class from course data submitted to the Superintendent using a combination of course elements, such as:
    - (i) CACTUS identification number;
    - (ii) teacher of record;
    - (iii) class period;
    - (iv) term of student enrollment; and
    - (v) course cycle.
- (4) "Pupil" means a student enrolled in a public school as of October 1 of the reported school year.
- (5) "Teacher" means a full-time equivalent licensed educator, such as:
- (a) a regular classroom teacher;
  - (b) a school-based specialist; or
  - (c) a special education teacher.

**R277-463-3. Class Size Average for Elementary Classes.**

- (1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.
- (b) An LEA shall calculate a class with students in multiple grades as one class.
  - (c) An LEA shall calculate an extended day classes in which one portion of the class arrives early and the other portion stays late as one class.
- (2)(a) The Superintendent shall calculate average class size by grade.
- (b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size average calculations.
  - (3) The Superintendent shall derive state and district-level class sizes from the median of school-level class sizes.

**R277-463-4. Class Size Average for Secondary Classes.**

- (1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.
- (b) An LEA shall calculate classes including students enrolled in multiple courses as one class.
- (2)(a) The Superintendent shall calculate average class size for core language arts, mathematics, and science courses.

- (b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size averages.

- (3) The Superintendent shall derive state and district-level class sizes from taking the median of school-level class sizes.

**R277-463-5. Pupil-Teacher Ratio Calculation.**

- (1)(a) The Superintendent shall calculate pupil-teacher ratios by school.
- (b) The Superintendent shall calculate the pupil-teacher ratio for each school shall dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.
  - (2) The Superintendent shall derive district-level ratios by taking the median of school-level ratios.
  - (3) The Superintendent shall derive state-level ratios for charter schools and traditional schools by taking the median of school-level data.

**R277-463-6. Reporting Format and Timeline.**

The Superintendent shall report school, district and state-level ratios and class size averages to the public as required under Section 53E-3-301.

**KEY: public schools, enrollment reporting, class size average reporting, pupil-teacher ratio reporting****August 7, 2018****Notice of Continuation April 8, 2019****Art. X, Sec 3****53E-3-301****53E-3-401(4)**



**R277. Education, Administration.****R277-472. Charter School Student Enrollment and Transfers and School District Capacity Information.****R277-472-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Below capacity at the elementary and secondary level" making the grade level available for transfer students from charter schools outside of the window provided for in Subsection 53G-6-503(3) is established if the grade level or program is less than 100 percent of the district, school, or grade level average.

(1) A special program is "below capacity" or available for transfer students from charter schools if the number of assigned students is less than the designated number of students determined by valid, research-based, or federally established standards.

(2) An entire elementary or secondary school is "below capacity" if the district determines that the average class size, using calculations of classes and courses in R277-472-3, is less than 100 percent of the district elementary or secondary average class size.

C. "Elementary (K-6) class size" means the number of students with a primary assignment to a specific teacher.

(1) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as one class.

(2) Elementary class size shall include all special education students who participate in all or part of the school day excluding those students assigned to self-contained special education classes.

D. "Secondary (7-12) class size" means the secondary school's calculation for each language arts, mathematics, and science course that is typically taught multiple times in the school day, such as 8th grade English, Algebra 1, Earth Systems.

**R277-472-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Subsection 53G-6-503(2), which directs the Board to make rules for students transferring between charter schools and district schools and enrolling and withdrawing from charter schools, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for students transferring between district public schools and charter schools; to define capacity in district public schools to allow for transfers into district schools from charter schools; to provide notice to parents and students of schools that have space available.

**R277-472-3. Class Size Calculations.**

A. Elementary class size: Each school district (or school as determined by the school district) shall calculate an average class size for each grade level. Schools shall derive this calculation from the total number of students in a given grade divided by the number of full time licensed teachers assigned to that grade.

(1) Schools shall not count students assigned to multiple grade level classes (and their respectively assigned teachers) in determining average class size for a grade level.

(2) Schools shall calculate elementary classes that group students in programs other than by grade level, such as gifted and talented or English Learner programs, as a class if students participate for the entire instructional day.

(a) If schools count students that participate in special programs for part of the school day, schools shall count the students as part of their age-appropriate grade level (together

with respective teachers) for purposes of this calculation.

(b) If multiple classes of special programs exist (including self-contained special education classes), a school shall determine an average class size for special programs consistent with state, federal and program standards.

B. Elementary school size: Each school district (or school) shall calculate a school-wide average class size by dividing the total full time teachers assigned to direct teaching situations by the total number of students receiving instruction.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all other special education students and teachers.

C. Secondary average class size: Each school district (or secondary school as determined by the district) shall calculate an average class size for each language arts, mathematics and science course that is taught multiple times during a typical school day by dividing the total number of full time teachers assigned to direct teaching situations by the total number of students enrolled.

(1) Schools shall not include self-contained special education students and teachers in this calculation.

(2) Schools shall include all special education students, other than full-time self-contained students, in the calculation.

D. District average: Each school district shall calculate the district-wide average class size for each grade level, each elementary program that enrolls students across grade levels and for each language arts, mathematics, and science course.

(1) School districts shall derive the calculation by dividing the total number of full time teachers (FTEs) assigned to direct teaching situations by the total number of fully enrolled students.

(2) School districts shall derive all calculations using October 1 enrollment and employment data.

E. In a school district with only one elementary or secondary school, or only one class of any subject or grade level, school districts may calculate the average class size for an entire school or the entire school district by averaging all the classes in the school or the school district. The school district may then determine that any class size less than the school district or school average class size is below capacity.

**R277-472-4. School District School Capacity Information.**

A. School districts shall provide and post the following information to facilitate transfer of students on school district or school websites:

(1) Elementary schools within the school district that are below capacity and available for transfer students;

(2) Grade levels and special programs within elementary schools that are below capacity and available for transfer students;

(3) Secondary schools that are below capacity and available for transfer students based on calculated capacity of language arts, science and mathematics; and

(4) Special programs within secondary schools that are below capacity and available for transfer students.

B. Below capacity standards for individual schools, grade levels, courses or programs do not apply if a school has documentation that the school community council in a public meeting has designated more than one-half of a school's school LAND trust annual allotment to reduce class size in a specific school, grade level, program or course.

**R277-472-5. Application Procedures for Students Entering and Exiting Charter Schools.**

A. Each charter school shall post on its website information and procedures required under Subsection 53G-6-503(2).

B. Each charter school shall develop and post admissions

procedures for the charter school including:

- (1) Lottery dates and procedures;
- (2) Admission forms;
- (3) School calendar;
- (4) Non-discrimination assurances;
- (5) A clear explanation, including timelines required in the law and provided in individual charter school policies, of student transfer procedures from a charter school to another charter school or to a district school;
- (6) A readily accessible transfer form; and
- (7) Assurance and parent signature that student has been admitted to only one public school.

**R277-472-6. Enrollment of Transferring Charter School Students in District Schools.**

A. A school district shall enroll as soon as possible, but no later than two weeks after specific formal parental request, a student who is a resident of a school district, who desires to transfer from a charter school to the resident school after June 30 and who submits enrollment information consistent with all school district students in a district school that is below capacity.

B. Schools may limit students who are transferring from a charter school to a district school after June 30 for the upcoming school year to schools, grade levels, programs and courses that have space available or are below capacity at the district schools.

C. A school district shall not require enrollment procedures or forms from students moving from a charter school to a district school that differ in any way from enrollment procedures/forms required for district students if the charter school students are leaving a charter school after the final grade level offered by the charter school.

D. Parents/Students who are enrolled at charter schools and are seeking enrollment at district schools should check with the school district office (or school principal if designated by the school district) for official current capacity information about schools, grade levels, programs or courses before leaving a charter school and forfeiting a charter school enrollment right.

E. If a school changes the location of services for a student with disabilities, the new location may only be considered a change of placement as determined by the student's IEP and consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, Part B.

F. Consistent with Subsection 53G-8-205(3), schools may deny enrollment to students in a public school if they have been expelled from another public school.

G. Schools may deny students' enrollment in a public school if they leave a public school with disciplinary procedures pending at the previous Utah public school until previous allegations have been resolved.

H. Charter schools and district schools shall notify each other of student enrollment consistent with Subsection 53G-6-503(4).

**KEY: charter schools, students, transfers  
August 7, 2014  
Notice of Continuation April 8, 2019**

**Art X, Sec 3  
53G-6-503(2)  
53E-3-401(4)**

**R277. Education, Administration.****R277-483. LEA Reporting and Accounting Requirements.****R277-483-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system; and
- (d) the federal ESSA, which requires states to revise and redesign school accountability systems.
- (2) The purpose of this rule is to establish reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

**R277-483-2. Definitions.**

- (1) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (2) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

**R277-483-3. Reporting of School Level Expenditures.**

- (1) In accordance with ESSA, the Superintendent shall make public required expenditure reporting elements, including school level expenditures.
- (a) The Superintendent shall calculate school level expenditures for all schools, by LEA.
- (b) The Superintendent shall calculate expenditures for the prior fiscal year.
- (2) The Superintendent's school level report for each school shall include:
- (a) average daily membership for the fiscal year covered by the report;
- (b) an indicator if the school is:
- (i) a Title I School; or
- (ii) a Necessarily Existent Small School;
- (c) grade levels served by each school;
- (d) student demographics;
- (e) expenditures recorded at the school level and central expenditures allocated to each school by:
- (i) federal program expenditures; and
- (ii) state and local combined expenditures;
- (f) calculated per pupil expenditures; and
- (g) average teacher salary.
- (3) The Superintendent shall exclude the following expenditures from per pupil school expenditure calculations and present them in total for each LEA:
- (a) capital acquisitions;
- (b) debt service; and
- (c) internal service funds.
- (4) The Superintendent may not report expenditure data for a school with an n-size of less than 10.

**R277-483-4. LEA Accounting Requirements.**

- (1) Each LEA shall:
- (a) record expenditures in compliance with the Board approved chart of accounts;
- (b) record expenditures using school location codes that can be mapped to official school location codes used in Board system of record;
- (c) record expenditures using approved district and school codes in the Board system of record;
- (d) submit expenditures using location codes in the UPEFS system; and
- (e) perform program accounting.

- (2) Each LEA shall record and report the following expenditures for each school annually:

- (a) salaries;
- (b) benefits;
- (c) supplies;
- (d) contracted services; and
- (e) equipment.
- (3) If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.
- (4)(a) An LEA shall record centralized administrative costs to the administrative location code.
- (b) The Superintendent shall allocate such costs to each school based on school enrollment.
- (5)(a) An LEA shall report transportation costs by function at the LEA level.
- (b) The Superintendent shall allocate transportation costs to individual school based on enrollment of each school.
- (6)(a) An LEA shall report child nutrition costs by function at the LEA level.
- (b) The Superintendent shall allocate child nutrition costs to individual school based on enrollment of each school.
- (7) The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).
- (8) If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

**KEY: reporting, ESSA, accounting  
April 8, 2019**

**Art X Sec 3  
53A-1-401**

**R277. Education, Administration.****R277-486. Professional Staff Cost Program.****R277-486-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-2-305(2), which authorizes the Board to make a rule requiring a certain percentage of a LEA's professional staff to be licensed in the area the teacher teaches to receive full funding under the state statutory formula.

(2) The purpose of this rule is to outline the eligibility requirements for an LEA to receive WPUs for professional staff including the acceptable experience and training an LEA's staff should have.

**R277-486-2. Definitions.**

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators that includes:

- (a) personal directory information;
- (b) educational background;
- (c) endorsements;
- (d) employment history;
- (e) professional development information; and
- (f) a record of any disciplinary action taken against the educator.

(3) "FTE" means full time equivalent.

(2) "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS).

(3) "Weighted Pupil Unit (WPU)" means the same as that term is defined in Subsection 53F-2-102(7).

**R277-486-3. Eligibility to Receive WPUs for Professional Staff.**

(1)(a) An LEA shall only receive WPUs in accordance with the formula provided in Subsection 53F-2-305(1)(a):

(i) for an educator who holds at least a bachelor's degree; and

(ii) to the extent an educator is qualified to work in the area the educator is assigned consistent with R277-520.

(b) A full time educator who is appropriately qualified in only 75% of the educator's assignments would count as 0.75 FTEs in the calculation of an LEA's WPU.

(c) An LEA shall have an appropriately qualified educator in every assignment to receive full funding.

(2) An LEA may not receive WPUs for interns or paraprofessionals in any assignment.

**R277-486-4. Acceptable Experience.**

(1) Educator experience for purposes of this rule shall be measured in one-year increments.

(2) For purposes of the professional staff cost calculation, an educator shall be credited by the Superintendent with one year of experience for every school year in which the educator is employed:

(a) at least half-time (0.5 FTE) in a position that requires a Utah Educator License as described in R277-520; and

(b) in a public school in the State of Utah or in a regionally accredited:

- (i) public school outside of the State of Utah;
- (ii) private school; or
- (iii) institution of higher education; or
- (iv) regional service center.

(3) To obtain credit under Subsection (2), the LEA which

employs the educator shall submit acceptable documentation verifying such experience to the Superintendent, including documentation of the school's or institution's regional accreditation.

(4) An educator who is employed in a prekindergarten position may not be counted for the purposes of determining an LEA's professional staff WPUS, unless the educator is or was employed in a special education position in an accredited school.

(5) None of the following experiences are considered acceptable for purposes of determining an educator's experience under this rule:

- (a) unpaid volunteer service;
- (b) paid consulting;
- (c) employment in non-instructional or non-administrative positions in a school setting; or
- (d) a school internship.

(6) The Superintendent may require an educator or LEA to provide documentation of an educator's experience in a private school, institution of higher education, or a regional service center to determine relevance of experience.

**R277-486-5. Acceptable Training.**

Acceptable training under this rule may include:

(1) Any degree at the bachelor's level or above or credit beyond the current degree from a regionally accredited institution of higher education.

(2) Any professional development activity consistent with R277-500 and approved in writing by the Superintendent.

**R277-486-6. Mapping Degree Summary Data to Statutory Formula.**

(1) For purposes of inputting degree summary data, an LEA shall use the coding provided by the Superintendent in correspondence with the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a):

(2) In addition to credit received for degree categories corresponding with the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a), an LEA shall be credited for an individual with National Board certification at the doctorate level.

**R277-486-7. Data Sources.**

(1) For an LEA that was in operation in the prior year, data shall be used from the June 29th update of CACTUS as required by Section R277-484-3.

(2) For an LEA that was not in operation in the prior year, data shall be used from the November 15th update of CACTUS as required by Section R277-484-3.

**KEY: professional staff**

**April 8, 2019**

**Notice of Continuation February 8, 2019**

**Art X Sec 3**

**53F-2-305(2)**

**53E-3-401(4)**

**R277. Education, Administration.****R277-493. Kindergarten Supplemental Enrichment Program.****R277-493-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(c) Subsection 53F-4-205(7), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer Section 53F-4-205 Kindergarten Supplemental Enrichment Program.

**R277-493-2. Definitions.**

(1)(a) "Eligible school" has the same meaning as defined in Subsection 53F-4-205.

(b) "Eligible school" does not include a school that receives funds under Section 53F-2-507, Enhanced kindergarten early intervention program.

(2) "Kindergarten supplemental enrichment program" has the same meaning as defined in Subsection 53F-4-205.

**R277-493-3. Program Administration.**

(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:

(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;

(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students to target for the kindergarten supplemental enrichment program;

(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;

(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53F-4-205(4);

(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind; and

(f) other information as requested by the Superintendent.

(3)(a) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(b) If an LEA submits a renewal application for a school that has previously been deemed eligible and received funding through the kindergarten supplemental enrichment program, the Superintendent may continue to deem the school as eligible based on the school's eligibility described in Subsection 53F-4-205(1)(b) from its initial application year.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53F-4-

205(2).

(5) An eligible school that receives kindergarten supplement enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-5.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

**KEY: kindergarten, supplementals, enrichments**

**June 7, 2018**

**Notice of Continuation April 8, 2019**

**Art X Sec 3**

**53E-3-401**

**53F-4-205(7)**

**R277. Education, Administration.****R277-495. Electronic Devices in Public Schools.****R277-495-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53G-8-202(2)(c)(i), which directs the Superintendent to develop a conduct and discipline policy model for elementary and secondary public schools; and

(d) 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with internet access to certify they have internet safety policies and technology protection measures in place to receive discounted internet access and services.

(2) The purpose of this rule is to direct all LEAs and public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices including:

(a) both LEA-owned and privately-owned, while on public school premises or during participation in school activities; and

(b) for LEA-owned devices, wherever the LEA-owned devices are used.

**R277-495-2. Definitions.**

(1) "Acceptable use policy" means a document stipulating constraints and practices that a user shall accept prior to a user accessing an LEA's, or any school within an LEA's, network or the Internet.

(2) "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument including:

(a) a smart phone;

(b) a smart or electronic watch;

(c) a tablet; or

(d) a virtual reality device.

(3) "Guest" means an individual:

(a) who is not a student, employee, or designated volunteer of a public school; and

(b) who is on school property or at the site of a school-sponsored activity or event.

(4) "Inappropriate matter" means pornographic or indecent material as defined in Subsection 76-10-1253(1)(a).

(5) "LEA" includes for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6) "LEA-owned electronic device" means a device that is used for audio, video, text communication, or other type of computer or computer-like instrument that is identified as being owned, provided, issued or lent by the LEA to a student or employee.

(7) "Policy" means an electronic device use policy as required by this rule that contains:

(a) permissible uses of an electronic device under certain circumstances; or

(b) restricted uses of an electronic devices under certain circumstances.

(8) "Privately-owned electronic device" means a device, including an electronic device that is used for audio, video, text communication, or other type of computer or computer-like instrument that is not owned or issued by the LEA to a student, or employee.

(9) "Public school" means a school or public school program, grades kindergarten through 12, that is part of the Utah public school system, including a school with a distance learning program or alternative program.

(10) "Student," for purposes of this rule, means an

individual enrolled as a student at an LEA regardless of the part-time nature of the enrollment or the age of the individual.

(11)(a) "The Children's Internet Protection Act (CIPA)" means federal regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC.

(b) CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

(12) "Utah Education Telehealth Network or UETN" means the Utah Education and Telehealth Network created in Section 53B-17-105.

**R277-495-3. Requirement of Electronic Device Use Policy, Creation, and Access.**

(1) An LEA shall require all schools under the LEA's supervision to have a policy or policies for students, employees and, where appropriate, for guests, governing the use of electronic devices on school premises and at school sponsored activities.

(2) An LEA shall review and approve policies regularly.

(3) An LEA shall encourage schools to involve teachers, parents, students, school employees, school community councils, and community members in developing the local policies.

(4) An LEA shall provide copies of the LEA's policies or clear electronic links to policies at LEA offices, in schools and on the LEA's website in the same location as the LEA's data governance plan required in R277-487.

(5) An LEA and all schools within the LEA shall cooperate to ensure that all policies within a school or school district are consistent and accessible to parents and community members.

(6) An LEA shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised acceptable use policy.

(7) An LEA shall retain documentation of the policy review and adoption actions.

**R277-495-4. LEA Electronic Device Policy Requirements.**

(1) An LEA's policy shall include at least the following:

(a) definitions of electronic devices covered by policy;

(b) prohibitions on the use of electronic devices in ways that:

(i) bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and guests, consistent with R277-609 and R277-613; or

(ii) violate local, state, or federal laws;

(c) the prohibition of access by students, LEA employees and guests to inappropriate matter on the internet and world wide web while using LEA equipment, services, or connectivity whether on or off school property;

(e) directives on the safety and security of students when using social media and other forms of electronic communications;

(f) directives on unauthorized access, including hacking and other unlawful activities by a user of an LEA electronic device; and

(g) directives on unauthorized disclosure, use and dissemination of personal student information under R277-487 and the Family Educational Rights and Privacy Act (FERPA)34 CFR, Part 99.

(2) In addition to the requirements of Subsection (1), an LEA's policies for student use of electronic devices shall include directives regarding the following:

(a) the use of privately-owned electronic devices during standardized assessments;

(b) administrative penalties for misuse of electronic devices during school hours or at a school-sponsored;

(c) violations of an LEA's acceptable use policies that may result in confiscation of LEA-owned electronic devices or restricted access on the LEA's;

(d) a student's personal responsibility for devices assigned or provided to a student by the LEA, both for loss or damage of electronic devices and use of electronic devices consistent with the LEA's directives;

(e) use of electronic devices in violation of an LEA's or teacher's instructional policies may result in the confiscation of privately-owned electronic devices for a designated period; and

(f) uses of privately-owned electronic devices to bully or harass other students or employees during school hours or at school-sponsored activities that may result in the student being subject to LEA disciplinary action.

(3) In addition to the provisions of Subsections (1) and (2), directives for employee use of electronic devices shall include:

(a) notice that use of electronic devices to access inappropriate matter on LEA-owned electronic devices or privately-owned electronic devices on school property, at school-sponsored events or using school connectivity may have criminal, employment or student disciplinary consequences, and if appropriate, may be reported to law enforcement;

(b) notice that an employee is responsible for LEA-issued electronic devices at all times and misuse of an electronic device may have employment consequences, regardless of the user; and

(c) required staff responsibilities in educating minors on appropriate online activities, as required by Section 53G-7-1202, and in supervising such activities.

(4) An LEA's policies shall also include the following:

(a) prohibitions or restrictions on unauthorized use that would cause invasions of reasonable expectations of student and employee privacy;

(b) procedures to report the misuse of electronic devices; and

(c) potential disciplinary actions toward students or employees for violation of local policies regarding the use of electronic devices; and

(d) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any.

(5) An LEA shall certify annually through UETN, and as required by the FCC, that the LEA has a CIPA-compliant acceptable use policy.

#### **R277-495-5. Required School Level Training.**

(1) A school shall provide, within the first 45 days of each school year, a school-wide or in-classroom training to employees and students that covers:

(a) the contents of the school's policy;

(b) the importance of digital citizenship;

(c) the LEA's conduct and discipline related consequences as related to a violation of the school's policy;

(d) the LEA's general conduct and discipline policies as described in Section 53G-8-202; and

(e) the benefits of connecting to the Internet and utilizing the school's Internet filters, while on school premises.

(2) A school that adopts a permissible use policy shall:

(a) within the first 45 days of each school-year, provide school-wide or in-classroom training to employees and students that covers:

(i) the elements described in Subsections (1)(a) through (e); and

(ii) specific rules governing the permissible and restricted uses of personal electronic devices while in a classroom; and

(b) require that each educator who allows the use of a personal electronic device in the classroom clearly communicates to parents and students the conditions under which the use of a personal electronic device is allowed.

#### **R277-495-6. Resources and Required Assurances.**

(1) The Superintendent may provide resources, upon request, for an LEA regarding electronic device policies, including:

(a) sample acceptable use policies;

(b) general best practices for electronic device use as outlined in R277-922; and

(c) materials for digital citizenship as outlined in Section 53G-7-1202.

(2) An LEA shall post the LEA's electronic device use policy on the LEA's website and provide a link to the Board through the annual assurances document described in R277-108.

#### **R277-495-7. LEA Requirement to Notify Parents of Filtering Options.**

An LEA shall provide an annual notice to all parents of the location of information for in-home network filtering options as provided for in Section 76-10-1231.

#### **KEY: electronic devices, policy**

**April 8, 2019**

**Notice of Continuation December 7, 2018**

**Art X Sec 3**

**53E-3-401(4)**

**53G-8-202(2)(c)(I)**

**R277. Education, Administration.****R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.****R277-704-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state;

(c) Section 53E-3-505, which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts.

(2) The purpose of this rule is:

(a) to provide funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels;

(b) to begin the development of a financial and economic literacy student passport;

(c) to provide for educator professional development using business and community expertise;

(d) to provide curriculum resources and assessments for financial and economic literacy;

(e) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12;

(f) to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy for students and parents; and

(g) to help students and parents to locate and use school and community resources to improve financial and economic literacy among students and families.

**R277-704-2. Definitions.**

(1) "Content Specialist" means the same as the term is defined in Subsection R277-520-1(1).

(2) "End of course assessment" means an online end of course assessment for students who take the general financial literacy course.

(3) "Endorsement" means the licensing document required by the board for teachers who teach general financial literacy.

(4) "Financial and economic literacy project" means a program or series of activities developed locally to implement financial and economic literacy education as described in Section 53E-3-505.

(5) "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.

(6) "LEA" for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(7) "Professional development" means the same as the term defined in Subsection R277-522-2(10).

**R277-704-3. Financial and Economic Literacy Student Passport.**

(1) The Superintendent shall develop and promote a financial and economic literacy student passport that includes tracking a student's progress.

(2) The Superintendent shall include parent and community participation on the development of the student

passport described in Subsection (1).

(3) The first round of implementation of the financial and economic literacy student passport shall be for students in grades nine through 12.

(4) The Superintendent shall provide a financial and economic literacy student passport to support educators as they educate students and their parents of the importance of financial and economic literacy, including its applicability to other subject areas.

(5) An LEA shall provide parents and students with the following:

(a) a financial and economic literacy passport and information about post-secondary education savings options; and

(b) information about the financial and economic literacy student passport opportunity as part of the student's plan for college and career readiness.

**R277-704-4. General Financial Literacy End of Course Assessment.**

(1) The Superintendent shall provide an LEA with an end of course assessment for general financial literacy which shall be:

(a) administered to every student who takes the general financial literacy course;

(b) aligned with general financial literacy revised core standards and objectives; and

(c) measured and analyzed at the school, district, and state-wide levels.

**R277-704-5. General Financial Literacy Teacher Endorsement.**

(1) A Board licensed educator who teaches general financial literacy is required to have licensing, endorsements, and other credentials equal to other content specialists as described in Section R277-520-4.

(2) An educator's course work may be part of or in addition to course work and programs of study required for licensure by the Board consistent with R277-502.

**R277-704-6. Financial and Economic Literacy Professional Development Opportunities.**

(1) The Superintendent shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.

(2) Professional development activities shall:

(a) provide information about financial and economic literacy including personal finance and economic responsibility;

(c) provide resources for teaching financial and economic literacy without promoting specific products or businesses; and

(d) work with the Superintendent to develop strategies for promoting financial and economic literacy.

**R277-704-7. Financial and Economic Literacy Taskforce.**

(1) The financial and economic literacy taskforce shall have the membership and general responsibilities outlined in Subsection 53E-3-505(3).

(2) In addition to the responsibilities outlined in Subsection 53E-3-505(3), the financial and economic literacy taskforce shall:

(a) analyze data provided by the Superintendent that includes:

(i) aggregated-school level proficiency results from the end of course assessment;

(ii) general enrollment data;

(iii) assessment of general financial literacy education quality; and

(iv) other relevant data to inform strategies for strengthening financial literacy proficiency; and



(b) serve as the writing committee for the financial literacy course standards described in Subsection 53E-4-204(1)(b), (3), and (4).

(3) The course standards described in Subsection (2)(b) are subject to the same approval requirements described in Subsection 53E-4-202(4).

**KEY: financial, economics, literacy**

**April 8, 2019**

**Notice of Continuation November 5, 2018**

**Art X Sec 3**

**53G-3-505**

**53E-3-401(4)**

**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.****R313-28. Use of X-Rays in the Healing Arts.****R313-28-10. Purpose and Scope.**

(1) The purpose of the rules in R313-28 is to prescribe the requirements for the use of x-rays in the healing arts.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(4) and 19-3-104(7).

**R313-28-20. Definitions.**

As used in R313-28, the following definitions apply:

"Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

"Actual focal spot" refer to "Focal spot."

"Aluminum equivalent" means the thickness of aluminum, type 1100 alloy, affording the same attenuation, under specified conditions, as the material in question. The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

"Assembler" means individuals engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent if they assemble components into an x-ray system that is subsequently used to provide professional or commercial services.

"Attenuation block" means a block or stack, having appropriate dimensions 20 cm by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"Automatic EXPOSURE control" means a device which automatically controls one or more technique factors in order to obtain, at a preselected location, a required quantity of radiation. Phototimer and ion chamber devices are included in this category.

"Barrier" refer to "Protective barrier".

"Beam axis" means a line from the source through the centers of the x-ray fields.

"Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

"Certified components" means components of x-ray systems which are subject to regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968.

"Certified system" means an x-ray system which has one or more certified components.

"Changeable filters" means filters designed to be removed by the operator.

"Coefficient of variation (C)" means the ratio of the standard deviation to the mean value of a population of observations.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" means computed tomography.

"CT gantry" means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structures and frames which house these components.

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of part of the human body for the purpose of recording or visualization for diagnostic purposes.

"Entrance EXPOSURE rate" means the EXPOSURE free in air per unit time at the point where the useful beam enters the patient.

"Equipment" refer to "X-ray equipment".

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to absorb preferentially selected radiations.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. It includes equipment housing, electrical interlocks, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

"Focal spot" means the area on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates. Also referred to as "Actual focal spot."

"Gonad shield" means a protective barrier for the testes or ovaries.

"Half-value layer or HVL" means the thickness of specified material which attenuates the beam of radiation to an extent that the EXPOSURE rate is reduced to one-half of its original value. In this definition, the contribution of scatter radiation, other than that which might be present initially in the beam concerned, is deemed to be excluded.

"Healing arts screening" means the use of x-ray equipment to examine individuals who are asymptomatic for the disease for which the screening is being performed and the use of x-rays are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to order x-ray tests for the purpose of diagnosis.

"Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds: for example, kVp times mA times seconds.

"HVL" refer to "half value layer."

"Image intensifier" means a device installed in its housing which instantaneously converts an x-ray pattern into a light image of higher energy density.

"Image receptor" means a device, for example, a fluorescent screen radiographic film, solid state detector, or gaseous detector, which transforms incident x-ray photons to produce a visible image or stores the information in a form which can be made into a visible image. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Irradiation" means the exposure of matter to ionizing radiation.

"Kilovolts peak" refer to "Peak tube potential".

"kV" means kilovolts.

"kVp" refer to "Peak tube potential."

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for:

- (a) the useful beam, and
- (b) radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

- (a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being ten millicoulombs, ten milliamperere seconds, or the minimum

obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means tube current in milliamperes.

"mAs" means milliamperes second or the product of the tube current in milliamperes and the time of exposure in seconds.

"Mammography imaging medical physicist" means an individual who conducts mammography surveys of mammography facilities.

"Mammography survey" means an evaluation of x-ray imaging equipment and oversight of a mammography facility's quality control program.

"Mobile x-ray equipment" refer to "X-ray equipment".

"Multiple scan average dose" means the average dose at the center of a series of scans, specified at the center of the axis of rotation of a CT x-ray system.

"New installation" means change, modification or relocation of new or existing shielding or equipment.

"Operator of diagnostic x-ray equipment" means either:

(a) The individual responsible for insuring that the appropriate technique factors are set on the x-ray equipment, or  
(b) The individual who makes the radiation exposure.

"Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

"PBL" refer to "Positive beam limitation."

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"PID" refer to "Position indicating device."

"Portable x-ray equipment" refer to "X-ray equipment".

"Position indicating device (PID)" means a device, on dental x-ray equipment which indicates the beam position and establishes a definite source-surface (skin) distance. The device may or may not incorporate or serve as a beam-limiting device.

"Positive beam limitation" means the automatic or semi-automatic adjustment of an x-ray beam to the size of the selected image receptor, whereby exposures cannot be made without such adjustment.

"Primary beam scatter" means scattered radiation which has been deviated in direction or energy by materials irradiated by the primary beam.

"Primary protective barrier" refer to "Protective barrier".

"Protective apron" means an apron made of radiation absorbing materials, used to reduce radiation exposure.

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy

and for confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Rating" means the operating limits of an x-ray system or subsystem as specified by the component manufacturer.

"Recording" means producing a permanent form of an image resulting from x-ray photons.

"Reference plane" means a plane which is displaced from and parallel to the tomographic plane.

"Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" means the amount of relative displacement of the patient with respect to the computer tomographic x-ray system between successive scans measured along the direction of such displacement.

"Scattered radiation" means radiation that, during passage through matter, has been deviated in direction, energy or both direction and energy. Also refer to "Primary Beam Scatter".

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

"SID" refer to "Source-image receptor distance".

"Source" means the focal spot of the x-ray tube.

"Source to image receptor distance" means the distance from the source to the center of the input surface of the image receptor.

"Special purpose x-ray system" means that which is designed for irradiation of specific body parts.

"Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

"Spot film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor, including a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"SSD" means the distance between the source and the skin entrance plane of the patient.

"Stationary x-ray equipment" refer to "X-ray equipment".

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation.

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For other equipment, peak tube potential in kV and either;

(i) the tube current in mA and exposure time in seconds, or

(ii) the product of tube current and exposure time in mAs.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

"Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

"Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube

installed. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"X-ray exposure control" means a device, switch, button, or other similar means by which an operator initiates or terminates the radiation exposure. The x-ray exposure control may include associated equipment, for example, timers and back-up timers.

"X-ray equipment" means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

"X-ray field" means that area of the intersection of the useful beam and one of the sets of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the EXPOSURE rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

### **R313-28-31. General and Administrative Requirements.**

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(a) X-ray equipment shall be FDA approved for use in the United States and shall be certified in accordance with 21 CFR 1010.2 and identified in accordance with 21 CFR 1010.3.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Director.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(f) Individuals shall be exposed to the useful beam for healing arts purposes only when the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes except for low dose, whole body scanners used for security purposes in correctional facilities; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-31(2)(c), shall list individual projections where mechanical holding devices can be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the

applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Director. When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or outdated, the Director shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

(a) model numbers of major components;

(b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and

(c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Hand-held medical x-ray systems. X-ray equipment designed to be hand-held shall comply with Section R313-28-31, excluding Subsection R313-28-31(5), and R313-28-52, excluding Subsections R313-28-52(8)(b)(i) and (ii).

(a) When operating hand-held equipment for which it is not possible for the operator to remain at least six feet from the x-ray machine during x-ray exposure, protective aprons of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso and gonads from backscatter radiation;

(b) In addition to the dose limits in R313-15-301, operators of hand-held x-ray equipment shall ensure that members of the public that may be exposed to scatter radiation or primary beam transmission from the hand-held device are not exposed above 2 milliroentgen per hour;

(i) Operators will ensure that members of the public likely to be exposed to greater than 2 milliroentgen per hour will be provided protective aprons of at least 0.5 millimeter lead equivalence or are moved to a distance such that the exposure rate to the individual is below 2 milliroentgen per hour; and

(c) In addition to the requirements of Subsection R313-28-350(1), each operator of hand-held x-ray equipment shall complete the training program supplied by the manufacturer prior to using the x-ray unit. Records of training shall be maintained on file for examination by an authorized representative of the Director.

(7) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in

procedures where the source to patient distance is less than 30 centimeters.

**R313-28-32. Plan Review.**

(1) Prior to construction, the floor plans, shielding specifications and equipment arrangement of all new installations, or modifications of existing installations, utilizing ionizing radiation shall be submitted to a Qualified Expert for review. The required information is denoted in R313-28-200 and R313-28-450.

(2) A copy of the Qualified Expert's conclusions regarding shielding specifications must be submitted to the Director within 14 working days.

(3) The Director may require additional modifications should a subsequent analysis of operating conditions, for example, a change in workload or use and occupancy factors, indicate the possibility of an individual receiving a dose in excess of the limits prescribed in R313-15.

**R313-28-35. General Requirements for Diagnostic X-Ray Systems.**

In addition to other requirements of R313-28, all diagnostic x-ray systems shall meet the following requirements:

(1) Warning label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(2) Battery charge indicator. On battery powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(3) Leakage radiation from the diagnostic source assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 25.8 uC/kg (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors.

(4) Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 0.516 uC/kg (two milliroentgens) in one hour at five centimeters from accessible surfaces of the component when it is operated in an assembled x-ray system under the conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(5) Beam quality.

(a) The half value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in R313-28-35, Table I. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made.

TABLE I

DESIGN OPERATING RANGE (KILOVOLTS PEAK)	MEASURED POTENTIAL (KILOVOLTS PEAK)	DENTAL INTRA-ORAL MANUFACTURED BEFORE AUGUST 1, 1974 AND ON OR AFTER DECEMBER 1, 1980	ALL OTHER DIAGNOSTIC X-RAY SYSTEMS
Below 51	30	(use prohibited)	0.3
	40	(use prohibited)	0.4
	50	1.5	0.5
	51	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
	71	2.1	2.1
Above 70	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5

140	3.8	3.8
150	4.1	4.1

(b) For capacitor discharge equipment, compliance with the requirements of R313-28-35(5)(a) shall be determined with the system fully charged and a setting of 10 mAs for exposures.

(c) The required minimal half-value layer of the useful beam shall include the filtration contributed by materials which are permanently present between the focal spot of the tube and the patient.

(d) Filtration control. For x-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filters and shall prevent an exposure unless the minimum amount of filtration necessary to produce the HVL required by R313-28-35(5)(a) is in the useful beam for the given kVp which has been selected.

(6) Multiple tubes. When two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. For equipment manufactured after August 1, 1974, indications shall be both on the x-ray control panel and at or near the tube housing assembly which has been selected.

(7) Mechanical support of tube head. The tube housing assembly supports shall be adjusted so that the tube housing assembly will remain stable during an exposure unless the tube housing movement during exposure is a designed function of the x-ray system.

(8) Technique indicators.

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic EXPOSURE controls are used, in which case the technique factors which are set prior to the exposure shall be indicated.

(b) On equipment having fixed technique factors, the requirements, in R313-28-35(8)(a) may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(9) Maintaining compliance. Diagnostic x-ray systems and their associated components certified pursuant to the provisions of 21 CFR Part 1020 (2006) shall be maintained in compliance with applicable requirements of that standard.

(10) Locks. All position locking, holding, and centering devices on x-ray system components and systems shall function as intended.

(11) X-ray systems which have been granted a variance by the Director, Center for Devices and Radiological Health, Food and Drug Administration (Director), from the performance standards for ionizing radiation emitting products, in accordance with 21 CFR 1010.4 (2006) shall be deemed to satisfy the requirements in R313-28 that correspond to the variance granted by the Director. The registrant shall insure that labeling pursuant to 21 CFR 1010.5(f) (2006) remains legible and visible on the x-ray system.

### R313-28-40. Fluoroscopic X-Ray Systems.

All fluoroscopic x-ray systems used shall be image intensified and meet the following requirements:

(1) Primary barrier.

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at SIDs for which the unit was designed.

(b) The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the entire useful beam.

(2) Fluoroscopic beam limitation.

(a) For certified fluoroscopic systems with or without a spot film device neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the

visible area of the image receptor by more than three percent of the SID. The sum of the excess length and the excess width shall be no greater than four percent of the SID.

(b) For uncertified fluoroscopic systems with a spot film device, the x-ray beam with the shutters fully open, during fluoroscopy or spot filming, shall be no larger than the largest image receptor size for which the device is designed. Measurements shall be made at the minimum SID available but at no less than 20 centimeters table top to the film plane distance.

(c) For uncertified fluoroscopic systems without a spot film device, the requirements of R313-28-40(1) apply.

(d) Other requirements for fluoroscopic beam limitation:

(i) means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field;

(ii) equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with either stepless adjustment of the x-ray field or with means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less;

(iii) if provided, stepless adjustment shall at the greatest SID, provide continuous field sizes from the maximum attainable to a field size of five centimeters by five centimeters or less;

(iv) for equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor; and

(v) for non-circular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

(3) Spot-film beam limitation. Spot-film devices shall meet the following requirements:

(a) means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot film selector. Adjustments shall be automatically accomplished except when the x-ray field size in the plane of the film is smaller than that of the selected portion of the film. For spot film devices manufactured after June 21, 1979, if the x-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option;

(b) neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed four percent of the SID;

(c) it shall be possible to adjust the x-ray field size in the plane of the film to a size smaller than the selected portion of the film. The minimum field size at the greatest SID shall be equal to, or less than, five by five centimeters;

(d) the center of the x-ray field in the plane of the film shall be aligned with the center of the selected portion of the film to within two percent of the SID; and

(e) on spot film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(4) Override. If a means exists to override the automatic x-ray field size adjustments required in R313-28-40(2) and (3), that means:

(a) shall be designed for use only in the event of system failure;

(b) shall incorporate a signal visible at the fluoroscopist's position which will indicate whenever the automatic field size adjustment is overridden; and

(c) shall be clearly and durably labeled as follows: FOR X-RAY FIELD LIMITATION SYSTEM FAILURE.

(5) Activation of the fluoroscopic tube. X-ray production in the fluoroscopic mode shall be controlled by a dead-man switch. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure immediately, but means may be provided to permit completion of a single exposure of the series in process.

(6) Entrance EXPOSURE rate allowable limits.

(a) For fluoroscopic equipment manufactured before May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment which is provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(ii) fluoroscopic equipment which is not provided with automatic exposure rate control shall not be operable at combinations of tube potential and current which will result in a EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient, except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(iii) fluoroscopic equipment which is provided with both automatic exposure rate control and a manual mode shall not be operable at combinations of tube potential and current that will result in an exposure rate of 2.58 mC/kg (ten roentgens) per minute in either mode at the point where the center of the useful beam enters the patient except:

(A) during recording of fluoroscopic images, or

(B) when an optional high level control is provided. When so provided, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(b) For fluoroscopic equipment manufactured on and after

May 19, 1995, the following requirements apply:

(i) fluoroscopic equipment operable at combinations of tube potential and current which will result in an EXPOSURE rate greater than 1.29 mC/kg (five roentgens) per minute at the point where the center of the useful beam enters the patient shall be equipped with automatic exposure rate control. Provision for manual selection of technique factors may be provided.

(ii) fluoroscopic equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 2.58 mC/kg (ten roentgens) per minute at the point where the center of the useful beam enters the patient except:

(A) during recording of images from an x-ray image-intensifier tube using photographic film or a video camera when the x-ray source is operated in pulsed mode, or

(B) when an optional high level control is activated. When the high level control is activated, the equipment shall not be operable at combinations of tube potential and current which will result in an EXPOSURE rate in excess of 5.16 mC/kg (20 roentgens) per minute at the point where the center of the useful beam enters the patient. Special means of activation of high level controls shall be required. The high level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(c) Compliance with the requirements of R313-28-40(6) shall be determined as follows:

(i) if the source is below the x-ray table, the EXPOSURE rate shall be measured one centimeter above the tabletop or cradle;

(ii) if the source is above the x-ray table, the EXPOSURE rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;

(iii) for a C-arm type of fluoroscope, the exposure rate shall be measured 30 centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at available SID's, provided that the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly; or

(iv) for a lateral type fluoroscope, the exposure rate shall be measured at a point 15 centimeters from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as close as possible to the point of measurement. If the tabletop is movable, it shall be positioned as close as possible to the lateral x-ray source with the end of the beam-limiting device or spacer no closer than 15 centimeters to the x-ray table.

(d) Fluoroscopic radiation therapy simulation systems are exempt from the requirements of R313-28-40(6).

(7) Measurement of entrance EXPOSURE rates shall be performed for both maximum and typical values as follows:

(a) measurements shall be made annually or after maintenance of the system which might affect the EXPOSURE rate;

(b) results of these measurements shall be posted where the fluoroscopist may have ready access to the results while using the fluoroscope and in the record required in R313-28-31(3)(b). The measurement results shall be stated in roentgens per minute and include the machine settings used in determining results. The name of the person performing the measurements and the date the measurements were performed shall be included in the results;

(c) conditions of the annual measurement of maximum entrance EXPOSURE rate shall be performed as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be

adjusted to those settings which give the maximum entrance EXPOSURE rate; and

(iii) x-ray systems that incorporate automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce the maximum output of that system; and

(d) conditions of the annual measurement of typical entrance EXPOSURE rate are as follows:

(i) the measurement shall be made under the conditions that satisfy the requirements of R313-28-40(6)(c);

(ii) the kVp, mA, and other selectable parameters shall be those settings typical of clinical use of the x-ray system; and

(iii) the x-ray system that incorporates automatic EXPOSURE rate control shall have an appropriate phantom placed in the useful beam to produce a milliamperage and kilovoltage typical of the use of the x-ray system.

(8) Barrier transmitted radiation rate limits.

(a) The EXPOSURE rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed 0.516  $\mu\text{C}/\text{kg}$  (two milliroentgens) per hour at ten centimeters from accessible surfaces of the fluoroscopic imaging assembly beyond the plane of the image receptor for each  $\text{mC}/\text{kg}$  (roentgen) per minute of entrance EXPOSURE rate.

(b) Measuring compliance of barrier transmission.

(i) The EXPOSURE rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(ii) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters above the tabletop.

(iii) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters.

(iv) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(9) Indication of potential and current. During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated.

(10) Source-skin distance. The source to skin distance shall not be less than:

(a) 38 centimeters on stationary fluoroscopic systems manufactured on or after August 1, 1974;

(b) 35.5 centimeters on stationary fluoroscopic systems manufactured prior to August 1, 1974;

(c) 30 centimeters on all mobile fluoroscopes; or

(d) 20 centimeters for all mobile fluoroscopes when used for specific surgical applications.

(11) Fluoroscopic timer.

(a) Means shall be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device shall not exceed five minutes without resetting.

(b) A signal audible to the fluoroscopist shall indicate the completion of a preset cumulative on-time. The signal shall continue to sound while x-rays are produced until the timing device is reset.

(12) Control of scatter radiation.

(a) The tables of fluoroscopic assemblies when combined with normal operating procedures shall provide protection from scatter radiation so that unprotected parts of a staff or ancillary individual's body shall not be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall be not less than 0.25 mm lead equivalent.

(b) Equipment configuration when combined with

procedures shall not allow portions of a staff member's or ancillary person's body, except the extremities, to be exposed to unattenuated scattered radiation emanating from above the tabletop unless:

(i) the radiation has passed through not less than 0.25 mm lead equivalent material including, but not limited to, drapes, bucky-slot cover panel, or self supporting curtains, in addition to the lead equivalency provided by the protective apron referred to in R313-28-31(2)(d),

(ii) that individual is at least 120 centimeters from the center of the useful beam, or

(iii) it is not feasible to attach shielding to special procedures equipment and personnel are wearing protective aprons.

(13) Spot film exposure reproducibility. Fluoroscopic systems equipped with radiographic spot film mode shall meet the exposure reproducibility requirements of R313-28-54.

(14) Radiation therapy simulation systems. Radiation therapy simulation systems shall be exempt from all the requirements R313-28-40(1), (8), and (11) provided that:

(a) the systems are designed and used in such a manner that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(b) the systems which do not meet the requirements of R313-28-40(11) are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require, in these cases, that the timer be reset between examinations.

#### **R313-28-51. Radiographic Systems Other than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Beam Limitation.**

The useful beam shall be limited to the area of clinical interest and show evidence of collimation. This shall be deemed to have been met if a positive beam limiting device meeting the manufacturer's specifications or the requirements of R313-28-300 has been properly used or if evidence of collimation is shown on at least three sides or three corners of the film, for example, projections of the shutters of the collimator, cone cutting at the corners or a border at the film's edge.

(1) General purpose stationary and mobile x-ray systems.

(a) Only x-ray systems provided with a means for independent stepless adjustment of at least two dimensions of the x-ray field shall be used.

(b) A method shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(c) The Board may grant an exemption on non-certified x-ray systems to R313-28-51(1)(a) and (b) provided the registrant makes a written application for the exemption and in that application:

(i) demonstrates it is impractical to comply with R313-28-51(1)(a) and (b); and

(ii) demonstrates the purpose of R313-28-51(1)(a) and (b) will be met by other methods.

(2) In addition to the requirements of R313-28-51(1) above, stationary general purpose x-ray systems, both certified and non-certified shall meet the following requirements:

(a) a method shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within two percent of the SID, and to indicate the SID to within two percent;

(b) the beam-limiting device shall numerically indicate the



field size in the plane of the image receptor to which it is adjusted; and

(c) indication of field size dimensions and SID's shall be specified in inches or centimeters and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within two percent of the SID when the beam axis is perpendicular to the plane of the image receptor.

(3) Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or shall be provided with means to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor.

(4) Special purpose x-ray systems.

(a) Means shall be provided to limit the x-ray field in the plane of the image receptor so that the x-ray field does not exceed each dimension of the image receptor by more than two percent of the SID when the axis of the x-ray beam is perpendicular to the plane of the image receptor.

(b) Means shall be provided to align the center of the x-ray field with the center of the image receptor to within two percent of the SID, or means shall be provided to both size and align the x-ray field so that the x-ray field at the plane of the image receptor does not extend beyond the edges of the image receptor. Compliance shall be determined with the axis of the x-ray beam perpendicular to the plane of the image receptor.

(c) R313-28-51(4)(a) and R313-28-51(4)(b) may be met with a system that meets the requirements for a general purpose x-ray system as specified in R313-28-51(1) or, when alignment means are also provided, may be met with either;

(i) an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirements for the combination of image receptor sizes and SID's for which the unit is designed with the beam limiting device having clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(ii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirement for the combinations of image receptor sizes and SID's for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which the aperture is designed and shall indicate which aperture is in position for use.

**R313-28-52. Radiographic Systems Other Than Fluoroscopic, Dental Intraoral, or Computed Tomography -- Radiation Exposure Control Devices.**

(1) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action. In addition, it shall not be possible to initiate an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(2) Exposure termination. Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. Except for dental panoramic systems, termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "zero."

(3) Manual Exposure Control: An x-ray control shall be incorporated into x-ray systems so that an exposure can be terminated at times except for:

(a) exposure of one-half second or less; or

(b) during serial radiography when means shall be provided to permit completion of a single exposure of the series

in process.

(4) Automatic EXPOSURE controls, phototimers. When automatic EXPOSURE control is provided:

(a) indication shall be made on the control panel when this mode of operation is selected;

(b) when the x-ray tube potential is equal to or greater than 51 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than the interval equivalent to two pulses; and

(c) the minimum exposure time for all equipment other than that specified in R313-28-52(4)(b) shall be equal to or less than 1/60 second or a time interval required to deliver five mAs, whichever is greater.

(5) Exposure Indication. Means shall be provided for visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Exposure Duration, Timer, Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliampere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location. The x-ray exposure control shall be placed so that the operator can view the patient while making the exposure.

(8) Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure switch permanently mounted in a protected area.

(b) Mobile and portable x-ray systems which are:

(i) used continuously for greater than one week at the same location, one room or suite, shall meet the requirements of R313-28-52(8)(a); or

(ii) used for less than one week at one location, one room, or suite shall be provided with either a protective barrier at least two meters (6.5 feet) high for operator protection during exposures, or means shall be provided to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly during the exposure.

**R313-28-53. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Source-to-Skin or Receptor Distance.**

Mobile or portable radiographic systems shall be provided with a means to limit the source-to-skin distance to 30 or more centimeters.

**R313-28-54. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Exposure Reproducibility.**

When technique factors, including control panel selections associated with automatic exposure control systems, are held constant the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

**R313-28-55. Radiographic Systems - Standby Radiation From Capacitor Discharge Equipment.**

Radiation emitted from the x-ray tube when the system is fully charged and the exposure switch or timer is not activated shall not exceed a rate of 0.516 uC/kg (two milliroentgens) per hour at five centimeters from accessible surfaces of the diagnostic source assembly, with the beam-limiting device fully open.

**R313-28-56. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- Accuracy.**

Deviation of measured technique factors from indicated

values of kVp and exposure time shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed ten percent of the indicated value for kVp and ten percent of the indicated value for times greater than 50 milliseconds.

**R313-28-57. Radiographic Systems Other Than Fluoroscopic, or Dental Intraoral Systems -- mA/mAs Linearity.**

The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 percent to 100 percent of the maximum rated potentials.

(1) Equipment having independent selection of x-ray tube current, mA. Where the tube current is continuous, the average ratios of exposure to the indicated milliamperere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive tube current settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(2) Equipment having a combined x-ray tube current-exposure time product, mAs, selector, but not a separate tube current, mA, selector. Where the tube current is continuous, the average ratios of exposure to the indicated milliamperere-seconds product, C/kg/mAs or mR/mAs, obtained at two consecutive milliamperere-seconds settings or at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

**R313-28-80. Intraoral Dental Radiographic Systems.**

In addition to the provisions of R313-28-31, R313-28-32 and R313-28-35, the requirements of this section apply to x-ray equipment and associated facilities used for dental radiography. Criteria for extraoral dental radiographic systems are covered in R313-28-51, R313-28-52 and R313-28-53. Intraoral dental radiographic systems used must meet the requirements of R313-28-80.

(1) Source-to-Skin distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

- (a) 18 centimeters if operable above 50 kilovolts peak, or
- (b) 10 centimeters if not operable above 50 kilovolts peak.

(2) Field limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray field so that:

(a) if the minimum source-to-skin distance (SSD) is 18 centimeters or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven centimeters; and

(b) if the minimum SSD is less than 18 centimeters, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six centimeters.

(3) Exposure Initiation.

(a) Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, for example, the depression of a switch. Radiation exposure shall not be initiated without a deliberate action; and

(b) It shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

(4) Exposure Termination.

(a) Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(b) An x-ray exposure control shall be incorporated into x-ray systems so that an exposure of more than 0.5 seconds can be terminated immediately by the operator.

(c) Termination of an exposure shall cause automatic

resetting of the timer to its initial setting or to "zero."

(5) Exposure Indication. Means shall be provided for visual indication, observable from the operator's protected position, whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(6) Timer Linearity. For systems having independent selection of exposure time settings, the average ratio of exposure to the indicated milliamperere-seconds product obtained at two consecutive timer settings or at two settings not differing by more than a factor of two shall not differ by more than 0.10 times their sum.

(7) Exposure Control Location and Operator Protection.

(a) Stationary x-ray systems shall be required to have the x-ray exposure control mounted in a protected area or a means to allow the operator to be at least 2.7 meters (9.0 feet) from the tube housing assembly while making exposures; and

(b) Mobile and portable x-ray systems which are:

(i) used for greater than one week in the same location, for example, a room or suite, shall meet the requirements of R313-28-80(7)(a); or

(ii) used for less than one week in the same location shall be provided with either a protective barrier at least two meters high for operator protection, or means to allow the operator to be at least 2.7 meters (nine feet) from the tube housing assembly while making exposures.

(8) Exposure Reproducibility. When all technique factors are held constant, the coefficient of variation of exposure shall not exceed 0.05 for certified x-ray systems or 0.10 for non-certified x-ray systems. This requirement applies to clinically used techniques.

(9) mA/mAs Linearity. The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer for fixed x-ray tube potentials within the range of 40 to 100 percent of the maximum rated potentials.

(a) For equipment having independent selection of x-ray tube current, the average ratios of exposure to the indicated milliamperere-seconds product obtained at two consecutive tube current settings or, when the tube current selection is continuous, two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(b) For equipment having a combined x-ray tube current-exposure time product selector but not a separate tube current selector, the average ratios of exposure to the indicated milliamperere-seconds product obtained at two consecutive mAs selector settings, or when the mAs selector provides continuous selection, at two settings differing by no more than a factor of two shall not differ by more than 0.10 times their sum.

(10) Accuracy. Deviation of technique factors from indicated values shall not exceed the limits specified for that system by its manufacturer. In the absence of manufacturer's specifications the deviation shall not exceed ten percent of the indicated value.

(11) Administrative Controls.

(a) Patient and film holding devices shall be used when the technique permits and holding is required.

(b) The x-ray tube housing and the position indicating device shall not be hand-held during an exposure.

(c) The x-ray system shall be operated so that the useful beam at the patient's skin does not exceed the requirements of R313-28-80(2).

(d) Dental fluoroscopy without image intensification shall not be used.

(12) Hand-held Portable Dental X-ray Systems.

(a) X-ray equipment designed to be hand-held shall comply with Section R313-28-31, excluding Subsection R313-28-31(5), and with Section R313-28-80, excluding Subsections R313-28-80(7)(b) and R313-28-80(11)(b).

(b) Protective shielding of at least 0.5 millimeter lead

equivalence shall be provided for the operator to protect the operator's torso, hands, face, and gonads from backscatter radiation. If the protective shielding is a backscatter shield attached to the x-ray unit, the shield shall be positioned as close to the patient as possible and the operator shall take care to remain in a protective position.

(c) Portable radiation machines designed to be hand-held are exempt from Subsection R313-28-35(7). The portable radiation machines shall be held by the tube housing support or handle and shall be used in accordance with the manufacturer's operating procedures.

(d) In addition to the requirements of Subsection R313-28-350(1), each operator shall complete the training program supplied by the manufacturer prior to using the x-ray unit. Records of training shall be maintained on file for examination by an authorized representative of the Director.

### **R313-28-120. Mammography X-Ray Systems - Equipment Design and Performance Standards.**

Only x-ray equipment meeting the following standards shall be used for mammography examinations.

#### (1) Equipment Design.

(a) FDA Standards. The requirements of 21 CFR 1020.30 and 21 CFR 1020.31 (2006) are adopted and incorporated by reference.

(b) Dedicated Equipment. The x-ray equipment shall be specifically designed for mammography.

(c) Compression. Devices parallel to the imaging plane shall be available to immobilize and compress the breast during mammography procedures.

(d) Image Receptor. The x-ray equipment shall have both an 18 cm by 24 cm and a 24 cm by 30 cm image receptor and moving grids matched to each image receptor size.

(e) Automatic Exposure Control. X-ray equipment used in healing arts screening shall have automatic exposure control capabilities with a post exposure meter which indicates either milliamperes-seconds or time values.

(f) Focal Spot. The focal spot size and source to image receptor distance configurations shall be limited to those appropriate for mammography.

(g) Beam Limitation. The x-ray equipment must allow for the x-ray field to extend to or beyond the chest wall edge of the image receptor.

(h) Magnification. X-ray equipment used in a noninvasive manner, requiring techniques beyond those utilized in standard mammography of asymptomatic patients, shall have x-ray magnification capability for noninvasive procedures. The equipment shall be able to provide at least one magnification within the range of 1.4 to 2.0.

#### (2) Performance Standards.

(a) State Standards. The x-ray equipment shall meet the applicable performance standards in R313-28.

(b) Filtration. The useful beam shall have a half-value layer between the values of the measured kilovolts peak divided by 100 and the measured kilovolts peak divided by 100 plus 0.1 mm of aluminum equivalent. These values are to include the contribution to filtration by the compression device.

(c) Minimum Radiation Output. X-ray equipment installed after the effective date of this rule shall meet the following standard: at 28 kilovolts peak on the focal spot used in routine healing arts screening the x-ray equipment shall be capable of sustaining a minimum output of 500 mR per second for at least three seconds. This output shall be measured at a point 4.5 centimeters from the surface of the patient support device when the source to image receptor distance is at its maximum and the compression paddle is in the beam. Existing x-ray equipment shall meet this minimum radiation output standard within one year of the effective date of this rule.

(d) Exposure Linearity. For kilovolts peak settings used

clinically, the exposure per mAs shall be within plus or minus ten percent of the average exposure per mAs for those mAs stations or time stations, if applicable, that are tested.

(e) Automatic Exposure Control. The automatic exposure control mode shall produce consistent film density under changing patient and examination conditions. These conditions include breast thickness, adiposity, kilovolts peak and density settings. This requirement will be deemed satisfied when:

(i) an automatic exposure control technique guide is posted, and

(ii) for a series of films obtained for attenuator thicknesses of two to seven centimeters the resulting radiographic optical densities are within plus or minus 0.2 of the average value when the kVp and density control setting are adjusted as indicated on the technique guide. The attenuator used for determining compliance shall be either acrylic or other tissue equivalent material.

(f) Patient Dose. The x-ray equipment must be capable of giving an average glandular dose to an average size breast of average tissue density that does not exceed 3.0 mGy (0.3 rad) with a grid or 1.0 mGy (0.1 rad) without a grid. This will be deemed satisfied when using an acrylic phantom of 4.5 cm thickness. In addition, under all clinical use conditions, the average glandular dose to the breast must be less than 5.0 mGy (0.5 rad) per film for healing arts screening procedures.

#### (3) Mammography X-ray Equipment Quality Control.

(a) Initial Installation. Upon completion of the initial installation of the x-ray equipment, and before it is commissioned for clinical use, the equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board. The evaluation results shall be submitted to the Director for review and approval.

(b) Annual Evaluation. At intervals not to exceed 12 months or at the request of the Director, the x-ray equipment shall be evaluated by a mammography imaging medical physicist who has been approved by the Board.

(c) The registrant shall develop and implement a quality control testing procedure for monitoring the radiation performance of the x-ray equipment.

### **R313-28-140. Qualifications of Mammography Imaging Medical Physicist.**

An individual seeking certification by the Board for approval as a mammography imaging medical physicist shall file an application for certification on forms furnished by the Division. The Board may certify individuals who meet the requirements for initial qualifications. To remain certified by the Board as a mammography imaging medical physicist, an individual shall satisfy the requirements for continuing qualifications.

#### (1) Initial qualifications.

(a) Be certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or the American Board of Medical Physicists in Diagnostic Imaging Physics; or

(b) Satisfy the following educational and experience requirements:

(i) Have a master's or higher degree from an accredited university or college in physical sciences; and

(ii) Have two years full-time experience conducting mammography surveys. Five mammography surveys shall be equal to one year full-time experience.

#### (2) Continuing qualifications.

(a) During the three-year period after initial certification and for each subsequent three-year period, the individual shall earn 15 hours of continuing educational credits in mammography imaging; and

(b) Perform at least two mammography surveys during the 12-month period from June 1 and May 31 to remain certified by

the Board.

(3) Mammography imaging medical physicists who fail to maintain the required continuing qualifications stated in R313-28-140(2) shall re-establish their qualifications before independently surveying another mammography facility. To re-establish their qualifications, mammography imaging physicists who fail to meet:

(a) The continuing education requirements of R313-28-140(2)(a) must obtain a sufficient number of continuing educational credits to bring their total credits up to the required 15 in the previous three years.

(b) The continuing experience requirement of R313-28-140(2)(b) must obtain experience by surveying two mammography facilities for each year of not meeting the continuing experience requirements under the supervision of a mammography imaging medical physicist approved by the Board.

### **R313-28-160. Computed Tomography X-ray Equipment.**

#### **(1) Equipment Requirements.**

(a) In the event of equipment failure affecting data collection, means shall be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or intercepting the x-ray beam with a shutter mechanism through the use of either a back-up timer or devices which monitor equipment function.

(b) A visible signal shall indicate when the x-ray exposure has been terminated through the means required by R313-28-160 (1)(a).

(c) The operator shall be able to terminate the x-ray exposure at any time during a scan, or series of scans, of greater than 0.5 second duration.

#### **(2) Tomographic Plane Indication and Alignment.**

(a) Means shall be provided to permit visual determination of the location of a reference plane. This reference plane can be offset from the location of the tomographic plane.

(b) If a device using a light source is used to satisfy R313-28-160 (2)(a), the light source shall provide illumination at levels sufficient to permit visual determination of the location of the tomographic plane or reference plane.

(c) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 millimeters.

#### **(3) Beam-On and Shutter Status Indicators.**

(a) The computed tomography (CT) x-ray control panel and CT gantry shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(b) Each emergency button or switch shall be clearly labeled as to its function.

#### **(4) Indication of CT Conditions of Operation.**

(a) The CT x-ray system shall be designed such that technique factors, tomographic section thickness, and scan increment shall be indicated prior to the initiation of a scan or series of scans.

(5) Quality Assurance Procedures. Quality assurance procedures shall be conducted on the CT x-ray equipment.

(a) The quality assurance procedures shall be in writing. Such procedures shall include, but not be limited to, the following:

(i) Specifications of the tests that are to be performed, including instructions to be employed in the performance of those tests; and

(ii) Specifications of the frequency at which tests are to be performed, the acceptable tolerance for each parameter measured and actions to be taken if tolerances are exceeded.

(b) The parameters measured to satisfy R313-28-160(5)(a)(ii) shall include, but not be limited to, kVp, mA and reproducibility of dose appropriate to the type of CT procedures

performed.

(c) Records of tests performed to satisfy the requirements of R313-28-160(5)(a) and (b) shall be maintained for three years for inspection by the Division.

#### **(6) Dose Calibration.**

(a) Radiation measurements shall be performed at least annually and after change or replacement of components which could cause a change in the radiation output.

(b) The calibration of the radiation measuring instrument shall be traceable to a national standard and shall be calibrated at intervals not to exceed two years.

(c) Measurements shall be specified in terms of the multiple scan average dose, using phantoms and technique factors appropriate to the type of CT procedures performed.

### **R313-28-200. Information on Radiation Shielding Required for Plan Reviews.**

In order to evaluate a need for radiation shielding associated with a plan review, the following information shall be submitted to a Qualified Expert so that an adequate review may be performed.

#### **(1) The plans showing, as a minimum, the following:**

(a) the normal location of the radiation producing equipment's radiation port, the port's travel and traverse limits, general directions of the radiation beam, locations of windows, the location of the operator's booth, and the location of the x-ray control panel;

(b) structural composition and thickness of walls, doors, partitions, floor, and ceiling of the rooms concerned;

(c) the dimensions, including height, floor to floor, of the rooms concerned;

(d) the type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest existing occupied areas;

(e) the make and model of the x-ray equipment, the maximum energy output, and the energy waveform; and

(f) the type of examination or treatment which will be performed with the equipment.

(2) Information on the anticipated workload of the x-ray systems in mA-minutes per week.

(3) A report showing all basic assumptions used in the development of the shielding specifications.

### **R313-28-300. Additional Requirements Applicable to Certified Systems Only.**

Diagnostic x-ray systems incorporating one or more certified components shall be required to comply with the following additional requirements which relate to the certified component.

(1) Beam limitation for stationary and mobile general purpose x-ray systems.

(a) There shall be provided a means of stepless adjustment of the size of the x-ray field. The minimum field size at an SID of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(b) When a light localizer is used to define the x-ray field, it shall provide an average illumination of not less than 160 LUX (15 foot-candles) at 100 centimeters or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of the quadrants of the light field. Radiation therapy simulation systems are exempt from this requirement.

(2) Beam Limitation for Portable X-ray Systems. Beam limitation for portable x-ray systems shall meet the additional field limitation requirements of R313-28-51(1) or R313-28-300(1).

(3) Beam limitation and alignment on stationary general purpose x-ray systems equipped with PBL.

(a) PBL shall prevent the production of x-rays when:

(i) either the length or the width of the x-ray field in the plane of the image receptor differs, except as permitted by R313-28-300(3)(c), from the corresponding image receptor dimensions by more than three percent of the SID; or

(ii) the sum of the length and width differences as stated in R313-28-300(3)(a)(i) without regard to sign exceeds four percent of the SID.

(b) Compliance with R313-28-300(3)(a) shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance shall be determined no sooner than five seconds after insertion of the image receptor.

(c) The PBL system shall be capable of operation, at the discretion of the operator, so that the field size at the image receptor can be adjusted to a size smaller than the image receptor through stepless adjustment of the field size. The minimum field size at a distance of 100 centimeters shall be equal to or less than five centimeters by five centimeters.

(d) The PBL system shall be designed so that if a change in image receptor does not cause an automatic return to PBL function as described in R313-28-300(3)(a), then change of the image receptor size or SID must cause the automatic return.

(4) Tube Stands for Portable X-Ray Systems. A tube stand or other mechanical support shall be used for portable x-ray systems, so that the x-ray tube housing assembly need not be hand-held during exposures.

#### **R313-28-350. Qualifications of Operators.**

Operators of diagnostic x-ray systems must be licensed to practice in Utah in accordance with Title 58 Chapter 54.

(1) The registrant shall document that the operator of diagnostic x-ray equipment is trained in the proper choice of technique factors to be used and in the safe and effective operation of the x-ray equipment.

#### **R313-28-400. Information to be Submitted by Persons Proposing to Conduct Healing Art Screening.**

(1) Individuals requesting that the Director approve a healing arts screening program shall submit the following information:

(a) name and address of the applicant and, where applicable, the names and addresses of agents within this State;

(b) diseases or conditions for which the x-ray examinations are to be used;

(c) description, in detail, of the x-ray examinations proposed in the screening program including the frequency of screening and the duration of the entire screening program;

(d) description of the population to be examined in the screening program including age, sex, physical condition, and other appropriate information;

(e) an evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used in preference to the x-ray examinations; and

(f) written evidence that:

(i) an Investigational Review Board, which has been approved by the United States Food and Drug Administration, has reviewed and approved the healing arts screening program; or

(ii) the United States Food and Drug Administration has approved the use of the x-ray examination for the diseases or conditions of interest.

(2) The Director shall not approve a request for a healing arts screening program unless the submissions required by R313-28-400(1) are determined by the Director to be complete and adequate.

#### **R313-28-450. Minimum Design Requirements for an X-ray**

#### **Machine Operator's Booth - New Installations Only.**

(1) Space requirements:

(a) The operator shall be allotted not less than 0.70 square meter (7.5 square feet) of unobstructed floor space in the booth.

(b) The minimum space as indicated above may be geometric configurations with no dimension of less than 0.61 meters (two feet).

(c) The space shall be allotted excluding encumbrances by the console, for example, overhang or cables, or other similar encroachments.

(d) The booth shall be located or constructed to ensure that unattenuated primary beam scatter originating on the examination table or at the wall mounted image receptor will not reach the operator's position in the booth.

(2) Structural Requirements.

(a) The booth walls shall be permanently fixed barriers of at least 2.13 meters (seven feet) high.

(b) When a door or movable panel is used as an integral part of the booth shielding, it must have a permissive device which will prevent an exposure when the door or panel is not closed.

(c) Shielding shall be provided to meet the requirements of R313-15.

(3) X-Ray Exposure Control Placement: The x-ray exposure control for the system shall be fixed within the booth and:

(a) shall be at least one meter (40 inches) from points subject to primary beam scatter, leakage or primary beam radiation; and

(b) shall allow the operator to use the majority of the available viewing windows.

(4) Viewing system requirements:

(a) When the viewing system is a window:

(i) the viewing window shall have a visible area of at least 0.09 square meters (one square foot);

(ii) regardless of size or shape, at least 0.09 square meters (one square foot) of the window area must be centered no less than 0.6 meters (two feet) from the open edge of the booth and no less than 1.5 meters (five feet) from the floor; and

(iii) the window shall have at least the same lead equivalence of that required in the booth's wall in which it is mounted.

(b) When the viewing system is by mirrors, the mirrors shall be so located as to accomplish the general requirements of R313-28-450(4)(a).

(c) When the viewing system is by electronic means:

(i) the camera shall be so located as to accomplish the general requirements of R313-28-450(4)(a); and

(ii) there shall be an alternate viewing system as a backup for the primary system.

#### **KEY: dental, X-rays, mammography, beam limitation**

**March 1, 2019**

**19-3-104**

**Notice of Continuation July 1, 2016**

**19-6-107**

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-15. Standards for the Management of Used Oil.**

**R315-15-1. Applicability, Prohibitions, and Definitions.**

**1.1 APPLICABILITY**

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-261.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-261-20 through 24.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-261-30 through 33 and 35 are subject to regulation as hazardous waste under R315-261 rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-261-20 through 24 and a mixtures of used oil and hazardous waste that is listed in R315-261-30 through 33 and 35 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-261-20 through 24 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-260 through 266, 268, 270, and 273 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-261-20 through 24; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-261-20 through 24.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-261-21.

(3) Very small quantity generator hazardous waste. Mixtures of used oil and very small quantity generator

hazardous waste regulated under Section R315-262-14 are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-260 through 266, 268, 270, and 273 as provided in R315-261-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-260 through 266, 268, 270, and 273 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the

requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-18 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

- (a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;
- (b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and
- (c) The used oil is delivered to a used oil burner.

TABLE 1  
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-266-100 through 112, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-264 or R315-265.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-261.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-261.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil

and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

- (1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;
- (2) gravity hot-draining and crushing;
- (3) dismantling and gravity hot-draining; or
- (4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

#### 1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-15-1.7(b) through (h) and R315-260.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dielectric oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

#### 1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

### R315-15-2. Standards for Used Oil Generators.

#### 2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to R315-15-2. For purposes of R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or

operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the used oil in compliance with R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15.2.1(b)(1) through (5):

(1) Generators who transport used oil, except under the self-transport provisions of R315-15-2.5(a) and (b), shall also comply with R315-15-4.

(2)(i) Except as provided in R315-15-2.1(b)(2)(ii), generators who process or re-refine used oil must also comply with R315-15-5.

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated onsite and is not being sent offsite to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse in accordance with section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive used oil to the extent possible in accordance with R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, shall also comply with R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first certify that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Generators who dispose of used oil shall also comply with R315-15-8.

#### 2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this rebuttable presumption, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids, and certain used oils removed from



refrigeration units described in R315-15-1.1(b)(1)(ii)(B).

### 2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of R315-15-2. Used oil generators are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste. In addition, used oil generators are subject to the requirements of R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and containers storage areas shall be managed to prevent releases of used oil to the environment.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

### 2.4 ON-SITE BURNING

On-site burners shall comply with R315-15-6 and, if applicable, shall obtain an Air Quality permit.

(a) Generators may burn used oil in used oil-fired space heaters without a used oil permit provided that:

(1) The heater burns only used oil that the owner or operator generates;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(3) The combustion gases from the heater are vented to the outside ambient air;

(4) The generator has knowledge that the used oil has not been mixed with hazardous waste; and

(5) The used oil is being legitimately burned to utilize its energy content.

(b) Used Oil Collection Center (UOCC). If it is registered as a Used Oil Collection Center as authorized in R315-15-3, the UOCC may burn used oil in used oil fired space heaters without a used oil permit under the provision described in R315-15-2.4(a) provided that the used oil is received from household do-it-yourselfer generators or farmers described in R315-15-2.1(a)(4) or the used oil is received from other generators and has been certified to meet the used oil fuel specifications of R315-15-1.2 by a registered used oil marketer in accordance with R315-15-7.

### 2.5 OFF-SITE SHIPMENTS

Except as provided in R315-15-2.5(a) through (c), a generator shall ensure that its used oil is transported only by a transporter who has obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number.

(a) Self-transportation of small amounts to approved collection centers. A generator may transport, without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate, used oil that is generated at the

generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. A generator may transport, without an EPA identification number, a used oil transporter permit, or used oil handler certificate, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned, operated, or both by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate if the used oil is reclaimed under a contractual agreement under which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

### R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

#### 3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A and B

(a) Applicability. R315-15-3.1 applies to owners or operators of Type A and B used oil collection centers:

(1) Type A used oil collection center. Type A and B is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers (DIYers) in quantities not exceeding five gallons per visit.

(2) Type B used oil collection center. Type B used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from farmers as required by R315-15-2.1(a)(4) in quantities not exceeding 55 gallons per visit from farmers and not exceeding five gallons per visit from household do-it-yourselfers.

(b) Type A or B used oil collection center requirements. Owners or operators of Type A or B used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2.

(2) Be registered with the Division of Waste Management and Radiation Control to manage used oil as a used oil collection center as required by R315-15-13.1; and

(3) Keep records of used oil collected by the collection center. This does not include used oil generated on site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volume of used oil picked up by a permitted transporter and the transporter's name and EPA identification number.

(4) A Type A or B used oil collection center shall not accept used oil from generators other than those specified in R315-15-3.1(1) and (2).

(c) Reimbursements. Type A or B used oil collection centers are classified as DIYer used oil collection centers and may be reimbursed as described in R315-15-14.

### 3.2 USED OIL COLLECTION CENTERS - TYPES C AND D

(a) Applicability. R315-15-3.2 applies to owners or operators of Type C and D used oil collection centers.

(1) Type C used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type C used oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in R315-15-2.1(a)(4).

(2) A Type D used oil collection center is any site or facility that only accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type D used oil collection centers do not qualify for reimbursement.

(b) Used oil collection center Type C and D requirements. Owners or operators of Types C and D used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2;  
 (2) Be registered with the Division of Waste Management and Radiation Control to manage used oil; and

(3) Keep records of used oil received from off-site sources and transported from the collection center. This does not include used oil generated onsite from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or, if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil collected by a permitted transporter and the transporter's name and federal EPA identification number.

(c) Reimbursements. Type C used oil collection centers may be reimbursed as described in R315-15-14 for household do-it-yourselfer and used oil generated by farmers as defined in R315-15-3.1. Other generator used oil does not meet the reimbursement criteria as do-it-yourselfer used oil and does not qualify for reimbursement.

### 3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. R315-15-3.3 applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of 55 gallons or less under the provisions of R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in R315-15-13.1, and comply with do-it-yourselfer collection center standards in R315-15-3.1. Used oil aggregation points that accept used oil from other generators shall register as collection centers, as described in R315-15-13.2, and comply with collection center standards in R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with

the generator standards in R315-15-2.

## R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

### 4.1 APPLICABILITY

(a) General. R315-15-4 applies to all used oil transporters, except as provided in R315-15-4.1(a)(1) through (4). Persons who transport used oil, persons who collect used oil from more than one generator and transport the collected used oil, and owners and operators of used oil transfer facilities are used oil transporters. Except as provided by R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by R315-15-13.4. Used oil transporters and operators of used oil transfer facilities shall obtain and maintain a used oil handler certificate in accordance with R315-15-13.8.

(1) R315-15-4 does not apply to on-site transportation.

(2) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in R315-15-2.5(b).

(4) R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/refiner, or burner subject to the requirements of R315-15. Except as provided in R315-15-4.1(a)(1) through (a)(3), R315-15-4 does, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters are subject to the requirements of R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Vehicles used to transport hazardous waste. Unless vehicles previously used to transport hazardous waste are emptied as described in R315-261-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Vehicles used to transport PCB-contaminated material. Unless vehicles previously used to transport PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S, (2013 edition, incorporated by reference), prior to transporting used oil, the used oil is considered to have been mixed with PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761.

(e) Tanks, containers, and piping that contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transferring used oil, the used oil is considered to have been mixed with PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761 Subpart S.

(f) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of R315-15 as indicated in R315-15-4.1(f)(1) through (5):

(1) Transporters who generate used oil shall also comply with R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in R315-15-4.2, shall also comply with R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with R315-15-8.

#### 4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in R315-15-4.2(b), used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in R315-15-5.

(c) Transporters of used oil that is removed from oil-bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in R315-15-5.

#### 4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Director of his used oil activity by submitting either:

- (1) A completed EPA Form 8700-12 or
- (2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:
  - (i) Transporter company name;
  - (ii) Owner of the transporter company;
  - (iii) Mailing address for the transporter;
  - (iv) Name and telephone number for the transporter point of contact;
  - (v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;
  - (vi) Location of all transfer facilities at which used oil is stored; and
  - (vii) Name and telephone number for a contact at each transfer facility.

#### 4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

- (1) Another used oil transporter, provided that the transporter has obtained an EPA identification number, permit number, and current used oil handler certificate issued by the Director;
- (2) A used oil processing/re-refining facility that has obtained an EPA identification number, processing/refining permit, and current used oil handler certificate issued by the Director;
- (3) An off-specification used oil burner facility that has obtained an EPA identification number, off-specification used oil burner permit, and current used oil handler certificate issued by the Director;
- (4) A used oil transfer facility that has obtained an EPA identification number, transfer facility permit, and current used oil handler certificate issued by the Director; or

(5) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with R315-15-9.

(d) The words "Used Oil" shall be clearly visible, in letters at least two inches high, on all vehicles transporting bulk used oil.

#### 4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is below 1,000 ppm.

(b) The transporter shall make this determination by:

- (1) Testing the used oil; or
- (2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(3) Record retention. Records of analyses conducted or information used to comply with R315-15-4.5(a), (b), and (c) shall be maintained by the transporter for at least three years.

#### 4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, in accordance with 40 CFR 112, in addition to the requirements of R315-15-4. Used oil transporters are also subject to the standards of R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-4.

(a) Applicability. R315-15-4 applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements found in R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(c) Condition of units. Containers and aboveground tanks and tank systems, including their associated pipes and valves, used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and container storage areas shall have a containment system that is designed and operated in accordance with R315-264-170 through 178.

(d) Secondary containment. Containers and aboveground tanks used to store used oil at transfer facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary system shall be of sufficient extent to prevent any used oil releases from tanks and containers in R315-15-4.6(b), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment, including sumps, within 24 hours of discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water containment structures at the facility. Any used oil in such sumps beyond a surface sheen shall be removed within 24 hours of discovery.

(6) Transporters loading to or from rail tanker cars shall also comply with secondary containment requirements of R315-15-4.10.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with R315-15-9.

#### 4.7 TRACKING

(a) Acceptance. Used oil transporters and transfer facilities shall keep a written record of each used oil shipment accepted for transport. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Written records for each shipment shall include:

(1) The name and address of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) Documentation demonstrating the transporter has met the halogen determination requirements of R315-15-4.5 and, where applicable, the PCB testing requirements of R315-15-18;

(4) The quantity of used oil accepted;

(5) The date of acceptance; and

(6)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters and transfer facilities shall keep a written record of each shipment of used oil that is delivered to another used oil transporter, a transfer facility, burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in R315-15-4.7(b)(1) through (b)(4) for each shipment of used oil exported outside of Utah.

(d) Record retention. The records described in R315-15-4.7(a), (b), and (c) shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. Used oil transporter and transfer facilities shall report annually by March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.4(d).

#### 4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in R315-15-1.1(e).

#### 4.9 ACCEPTANCE OF OFF-SITE USED OIL

Used oil transporters and transfer facilities accepting used oil from off-site shall ensure that the transporters delivering the used oil have obtained a current used oil transporter permit and an EPA identification number.

#### 4.10 TRANSFER OF USED OIL TO OR FROM RAIL CARS

(a) Spill prevention. Facilities or transporters loading or unloading used oil from rail cars shall:

(1) Use spill pans beneath rail cars being loaded or unloaded with used oil. These spill pans shall be placed inside and outside of the track below the rail car loading port in such a way as to capture releases that might occur during the loading and unloading operations;

(2) Securely park used oil transportation trucks on a loading pad during the loading and unloading of used oil between those trucks and the rail tanker car. The loading pad shall be constructed of asphalt or concrete, or an equivalent system approved by the Director, and shall be sloped or bermed in such a way as to contain used oil spills;

(3) Be loaded and unloaded through a valve or port located on top of the rail car unless otherwise approved by the Director; and

(4) Transporter personnel shall actively monitor the transfer during the entire loading and unloading process.

(b) Storage at rail loading and unloading facilities. If, during the normal course of transportation, used oil remains at the loading and unloading facility for more than 24 hours but less than 35 days, the facility is subject to regulation as a used oil transfer facility as defined in R315-15-4.6 and is required to apply for a permit as a used oil transfer facility as defined in R315-15-13.4. A transfer facility that stores used oil for more than 35 days is subject to the processor/re-refiner requirements as defined in R315-15-5.

**R315-15-5. Standards for Used Oil Processors and Re-Refiners.****5.1 APPLICABILITY**

(a) The requirements of R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15-5.1(b)(1) through (b)(7).

(1) Processors/re-refiners who generate used oil shall also comply with R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with R315-15-4.

(3) Processor/re-refiners who burn off-specification used oil for energy recovery shall also comply with R315-15-6 except where:

(i) The used oil is only burned in an on-site space heater that meets the requirements of R315-15-2.4; or

(ii) The used oil is only burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with R315-15-8.

(6) Tanks, containers, and piping that contained hazardous waste. Unless tanks, containers, and piping that previously contained hazardous waste are emptied as described in R315-261-7 prior to storing or transferring used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(7) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to storing or transferring of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed in accordance with R315-15-18 and 40 CFR 761 Subpart S, as applicable.

(c) Processors/re-refiners shall obtain a permit from the Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by R315-15-13.5.

**5.2 NOTIFICATION**

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by

submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

**5.3 GENERAL FACILITY STANDARDS**

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, surface water, or groundwater that could threaten human health or the environment.

(2) Required equipment. All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice and signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency. Records of such testing and maintenance shall be kept for three years.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in R315-15-5.3(a)(2).

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in R315-15-5.3(a)(2).

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the facility's operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processor and re-refiner facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil that could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with R315-15-5.3(b)(1) and (6) in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, in accordance with R315-15-5.3(a)(6).

(iv) The plan shall list names, addresses, and phone numbers, of all persons qualified to act as 24-hour emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also R315-15-5.3(b)(5).

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases

of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health and to the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the coordinator shall report the findings as follows:

(A) If the emergency coordinator assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) The emergency coordinator shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or

isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Director, and appropriate local authorities that the facility is in compliance with R315-15-5.3(b)(6)(viii)(A) and (B) before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Director. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

#### 5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials and processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from EPA SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation.

The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

#### 5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, found in 40 CFR 112, in addition to the requirements of R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements found in R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under R315-264 or R315-265.

(b) Condition of units. Containers and aboveground tanks including their associated pipes and valves used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration;

(2) Not leaking; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities including their pipe connections and valves shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground; or

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary containment system shall be of sufficient size and volume to prevent any used oil released from tanks and containers described in R315-15-5.5(a), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment within 24 hours of their discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in such sumps shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are

not hazardous waste under this chapter. Nonhazardous solid waste must be managed in accordance with R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in R315-15-5.5(f)(1)(i), then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, 40 CFR 265.310 which is adopted by reference.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under R315-261.

#### 5.6 ANALYSIS PLAN

Owners or operators of used oil processing/re-refining facilities shall develop and follow a written used oil analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in R315-15-5.4. The plan shall specify the following:

(1) Whether sample analyses documented generator knowledge of the halogen content of the used oil, or both, will be used to make this determination.

(2) If sample analyses are used to make this determination, the plan shall specify:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261 Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and

(iii) The methods used to analyze used oil for the parameters specified in R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in R315-15-7.3. At a minimum, the plan shall specify the following if R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-261, Appendix I; or

(B) A method shown to be equivalent under R315-260-21;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

#### 5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a written record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a

log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Written documentation that the processor/re-refiner has met the rebuttable presumption requirements of R315-15-5.4 and the PCB testing requirements of R315-15-18.

(b) Delivery. Used oil processor/re-refiners shall keep a written record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years at the permitted facility or other location approved by the Director.

#### 5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator of the processor/re-refiner facility shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.5(d).

#### 5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil offsite shall ship the used oil using a used oil transporter who has obtained an EPA identification number, a permit, and current used oil handler certificate issued by the Director.

#### 5.10 ACCEPTANCE OF OFF-SITE USED OIL

Processors accepting used oil from off site shall ensure that transporters delivering used oil to their facility have obtained a



current used oil transporter permit and an EPA identification number.

#### 5.11 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in R315-15-1.1(e).

### **R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.**

#### 6.1 APPLICABILITY

(a) General. A used oil burner is a person who burns used oil for energy recovery. An on-specification used oil burner is a person who only burns used oil that meets the specifications of R315-15-1.2. Used oil that has not been determined to be on-specification used oil by a Utah-registered marketer shall be managed as off-specification used oil except as described R315-15-2.4. An off-specification used oil burner is a person who burns used oil not meeting the specifications found in R315-15-1.2 for energy recovery. Facilities burning used oil for energy recovery under the following conditions are subject to R315-15-6.1(a) and (b) and R315-15-6.2(b) and (c), but not other portions of R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a Utah-registered marketer who claims and has demonstrated that the used oil meets the used oil fuel specifications set forth in R315-15-1.2 and who delivers the used oil in the manner set forth in R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used oil burners who conduct the following activities are subject to the requirements of R315-15 as indicated below.

(1) Burners who generate used oil shall comply with R315-15-2;

(2) Burners who transport used oil shall comply with R315-15-4;

(3) Except as provided in R315-15-6.2(b)(2), burners who process or re-refine used oil shall comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall comply with R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with R315-15-8; and

(6) Burners who collect used oil shall also comply with the collection center requirements in R315-15-3. Burners may only burn used oil collected from other generators if that used oil has been certified to be on-specification used oil by a Utah-registered used oil marketer in compliance with R315-15-7. Burners who collect and burn used oil that is not "do-it-yourselfer" or farmer-generated as described in R315-15-2.1(a)(1) and (4), shall obtain a used oil marketer registration before burning such oil and shall comply with the provisions of R315-15-7.

(7) Tanks, containers, and piping that previously contained listed hazardous waste. Unless tanks, containers, and piping that previously contained listed hazardous waste are decontaminated as described in R315-261-7 prior to storing used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(8) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transfer of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18.

(c) Off-specification used oil burner permit. Off-specification used oil burners shall obtain a permit from the Director prior to burning off-specification used oil unless exempted by R315-15-13.6(b)(5). An application for a permit shall contain the information required by R315-15-13.6(b). Off-specification used oil burners shall also obtain a used oil handler certificate in accordance with R315-15-13.8.

(d) Testing of used oil fuel for PCBs. Used oil to be burned for energy recovery is presumed to contain quantifiable levels, 2 ppm or greater, of PCBs unless a used oil marketer obtains laboratory analyses that the used oil fuel does not contain quantifiable levels of PCBs. The person who first claims that the used oil fuel does not contain a quantifiable level of PCBs shall obtain analyses or other information to support the claim, as described in R315-15-18.

#### 6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in R315-260-10;

(2) Boilers, as defined in R315-260-10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under R315-264-340 through 351 or 40 CFR 265.340 through 352 which are adopted by reference.

(b)(1) With the exception of the aggregation activity described in R315-15-6.2(b)(2), used oil burners may not process used oil unless they also comply with R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of marketing on-specification used oil without also complying with the processor/re-refiner requirements in R315-15-5.

(c) Burning of hazardous waste. Used oil burners may only burn hazardous waste if they are permitted to do so by the Director.

#### 6.3 NOTIFICATION FOR OFF-SPECIFICATION USED OIL BURNERS

(a) Identification numbers. Off-specification used oil burners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12.; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of

contact;

- (v) Type of used oil activity; and
- (vi) Location of the burner facility.

#### 6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by

- (1) Testing the used oil;
- (2) Applying documented generator knowledge of the halogen content of the used oil in light of the materials and processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-261-30 through 33 and 35. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III update IV, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed through a tolling arrangement, as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-6.4(a), (b), and (c) shall be maintained at the burner facility or another facility approved by the Director for at least 3 years.

#### 6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of R315-15-6. Used oil burners are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-6.

(a) Storage units. Off-specification used oil burners may not store used oil in units other than tanks, containers or units subject to regulation under R315-264 and R315-265.

(b) Condition of units. Containers and aboveground tanks used to store oil at off-specification used oil burner facilities shall be:

- (1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and
- (2) Not leaking.

(c) Secondary containment. Containers and aboveground tanks used to store off-specification used oil at burner facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

- (1) The secondary containment system shall consist of:
  - (i) Dikes, berms, or retaining walls; and

- (ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground.

- (iii) Other equivalent secondary containment approved by the Director.

(2) The entire containment system, including walls and floor, shall be of sufficient extent and sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) Any accumulation of water, used oil, or other liquid shall be removed from secondary containment within 24 hours of discovery.

(4) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in sumps and similar water-containment structures shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, a burner shall comply with R315-15-9.

#### 6.6 TRACKING FOR OFF-SPECIFICATION USED OIL FACILITIES

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivered the used oil to the burner;

- (2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

- (3) The EPA identification number of the transporter who delivered the used oil to the burner;

- (4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

- (5) The quantity of used oil accepted;

- (6) The date of acceptance; and

- (7) Documentation demonstrating that the transporter has met the rebuttable presumption requirements of R315-15-6.4 and, where applicable, the PCB testing requirements of R315-15-18;

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

#### 6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

- (1) The burner has notified the Director of the location and general description of the burner's used oil management activities; and

- (2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-6.7(a) shall be maintained, at the permitted facility or other location approved by the Director, for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

#### 6.8 MANAGEMENT OF RESIDUES AT OFF-

**SPECIFICATION USED OIL BURNER FACILITIES**

Off-specification used oil burners who generate residues from the storage or burning of used oil shall manage the residues as specified in R315-15-1.1(e).

**6.9 ACCEPTANCE OF OFF-SITE USED OIL**

Off-specification used oil burners accepting used oil from off-site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

**R315-15-7. Standards for Used Oil Fuel Marketers.****7.1 APPLICABILITY**

(a) Any person who conducts either of the following activities is a used oil fuel marketer and is subject to the requirements of R315-15-7 and R315-15-13.7:

- (1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or
- (2) First determines and claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to R315-15-7:

- (1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of R315-15-1.2.

(c) Any person subject to the requirements of R315-15-7 shall also comply with one of the following:

- (1) R315-15-2 - Standards for Used Oil Generators;
- (2) R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;
- (3) R315-15-5 - Standards for Used Oil Processors and Re-refiners; or
- (4) R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number and a used oil handler certificate, both issued by the Director as required by R315-15-13.7 and R315-15-13.8.

**7.2 PROHIBITIONS**

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

- (a) Has an EPA identification number; and
- (b) Burns the used oil in an industrial furnace or boiler identified in R315-15-6.2(a).

**7.3 ON-SPECIFICATION USED OIL FUEL**

(a) Analysis of used oil fuel. A used oil fuel marketer who is a used oil generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of R315-15-1.2 and the PCB requirements of R315-15-18 by performing analyses or obtaining copies of analyses or other information approved by the Director documenting that the used oil fuel meets the specifications. Used oil is not considered to be on-specification until it has been certified as such by a registered used oil fuel marketer in accordance with the used oil fuel marketer's analysis plan, approved by the Director.

(b) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under R315-15-1.2 and the PCB

requirements of R315-15-18 shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

**7.4 NOTIFICATION**

(a) Identification numbers. A used oil fuel marketer subject to the requirements of R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

- (1) A completed EPA Form 8700-12; or
- (2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:
  - (i) Marketer company name;
  - (ii) Owner of the marketer;
  - (iii) Mailing address for the marketer;
  - (iv) Name and telephone number for the marketer point of contact; and
  - (v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

**7.5 TRACKING**

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner;
- (2) The name and address of the burner who will receive the used oil;
- (3) The EPA identification number of the transporter who delivers the used oil to the burner;
- (4) The EPA identification number of the burner;
- (5) The quantity of used oil shipped; and
- (6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the fuel specifications under R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications required under R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5(a) and (b) shall be maintained for at least three years.

**7.6 NOTICES**

(a) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified the Director stating the location and general description of used oil management activities; and

(2) The burner has obtained an EPA identification number and, if the off-specification used oil is burned in Utah, an off-specification used oil burner permit and current used oil handler

certificate from the Director; and

(3) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-7.6(a) of this section shall be maintained for three years, at the permitted facility or other location approved by the Director, from the date the last shipment of off-specification used oil is shipped to the burner.

#### 7.7 LABORATORY ANALYSES

Used oil marketers shall use a Utah-certified laboratory, as specified in R315-15-1.8, to satisfy the analytical requirements of R315-15-7.

### R315-15-8. Standards for the Disposal of Used Oil.

#### 8.1 APPLICABILITY

The requirements of R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

#### 8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and that cannot be recycled in accordance with R315-15 shall be managed in accordance with the hazardous waste management requirements of R315-260 through 266, 268, 270, and 273.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318.

#### 8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

### R315-15-9. Emergency Controls.

#### 9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(1) Stop the release;

(2) Contain the release;

(3) Clean up and manage properly the released material as described in R315-15-9.3; and

(4) If necessary, repair or replace any leaking used oil tanks, containers, and ancillary equipment prior to returning them to service.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the

National Response Center, <http://nrc.uscg.mil/nrchp.html>, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

#### 9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Director, a variance to the used oil transporter permit and used oil handler certificate requirement and the US EPA identification number requirement for used oil transporters may be granted by the Director until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Director.

#### 9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Director so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The Director may require releases to be cleaned up to standards found in US EPA Regional Screening Levels. The cleanup or other required actions shall be at the expense of the person responsible for the release.

#### 9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Director a written report that contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

### R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing/re-refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

(1) cleanup and closure costs;

(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability; and

(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

(i)(A) The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Director of its ability to meet these financial requirements.

(B) The owner or operator shall present with its permit application the information the Director requires to demonstrate its general comprehensive liability coverage.

(C) The owner or operator shall use the financial mechanisms described in R315-15-12 to demonstrate its ability to meet the financial requirements of R315-15-10(a)(1) and (a)(3).

(ii) In approving the financial mechanisms used to satisfy the financial requirements, the Director will take into account existing financial mechanisms already in place by the facility if

required by R315-264-140 through 151, R315-265-140 through 150, and R311-201-6. Additionally, the Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

(iii) Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Director as part of the permit application and approval process and shall be maintained until released by Director.

(iv) Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Director.

(b)(1) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden accidental releases, non-sudden accidental releases, or both, of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Director as provided for in R315-15-10.

(2) Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(i) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs; and

(ii) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(2)(i), coverage shall be in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, and \$3 million per occurrence for non-sudden releases, with an annual aggregate coverage of \$6 million, exclusive of legal defense costs;

(iii) For operations covered under Subsection R315-15-10(b)(2)(ii), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of \$4 million per occurrence, with an annual aggregate coverage of \$8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Director as provided for R315-15-10. The minimum amount of the coverage for used oil transporters shall be \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Director.

(d) An owner or operator responsible for cleanup and closure under R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Director through the use of an

acceptable financial assurance mechanism indicated under R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under R315-15-10(a) and (b) unless these requirements are waived by the Director. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Director shall waive an owner or operator from its existing financial responsibility mechanism as described in R315-15-10 when:

(1) The Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to R315-15-11; or

(3) The Director determines that financial responsibility is no longer applicable under R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-10.

#### **R315-15-11. Cleanup and Closure.**

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of R315-15-11 or supplies evidence acceptable to the Director demonstrating a closure mechanism meeting the requirements of R315-264-140 through 151 and R315-265-140 through 150.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Director that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

#### **11.2 CLEANUP AND CLOSURE PLAN**

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Director for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Director.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Director.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in R315-264-145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations that will be cleaned, closed, or both during the active life of the facility.

(iii) The highest cost estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-

11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under R315-15-10. Within 30 days of the Director's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Director:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

#### 11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Director that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) Within 90 days after the Director revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Director determines that the owner or operator has failed to comply with R315-15, the Director may, after 30 days following written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of R315-15-10.

#### 11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Director, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and R315-15.

### **R315-15-12. Financial Assurance.**

#### 12.1 DEFINITIONS

For the purposes of R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Director in accordance with R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1,

1993, and received an operating permit in accordance with R315-15-13 from the Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

#### 12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under R315-15-10 sufficient to assure cleanup and closure of the facility in conformance with R315-15-11.1 with one or more of the financial assurance mechanisms of R315-15-12.3 prior to receiving a permit from the Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Director, above the storage or processing capacity identified in the permit application approved by the Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Director as identified in R315-15-10(e).

#### 12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the Director, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Director that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to the Director on or before the anniversary date of the trust.

(v) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director in writing prior to the trustee granting reimbursement.

(viii) The Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Director as identified in R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective before the initial receipt of used oil.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the

requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Director as identified in R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Director a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Director found in R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective before the initial receipt of used oil

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the language incorporated by reference in R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(v) The letter of credit shall follow the wording provided by the Director as identified in R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective before the initial receipt of used oil.

(A) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Director.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Director, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Director.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the Director when the Director notifies the Insurer that the Director is making a claim, as provided for in R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within 30 days of establishing the standby

trust agreement.

(C) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Director incorporated by reference in R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(vi) An owner or operator, or other person authorized by the Director, may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in R315-15-12.

(xii) Whenever requested by the Director, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xv) All policy provisions related to R315-15 shall be construed in accordance with the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the



policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Director at the time the Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of R315-15-12.3(b)(1), except for item R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under R315-15, must demonstrate financial responsibility for bodily injury and property damage to third parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(3) The owner or operator shall demonstrate compliance with R315-15-10(b) or (c) by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.10.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Director may adjust the level of financial responsibility required under R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the

environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Director may require that an owner or operator of the used oil facility or operation comply with R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Director when requested in writing, any information the Director requests to determine whether cause exists for an adjustment to the financial responsibility under R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in R315-15-10(d) has changed, it may submit a written request to the Director to modify its permit to reflect the changed responsibility.

(f) The Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Director to modify its permit to change its financial assurance mechanism or mechanisms as described in R315-15-12.

(h) The Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Director by certified mail within ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or  
(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

#### 12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by R315-15-10, 11, and 12 and submitted to the Director with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Director by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted

to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

- (i) policy number or other mechanism control number,
- (ii) effective date of policy or other mechanism, and
- (iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

- (i) policy number,
- (ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and
- (iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and R315-15-10, 11, and 12, shall be provided upon request by the Director.

### **R315-15-13. Registration and Permitting of Used Oil Handlers.**

#### **13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A AND B**

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) the type of storage and secondary containment to be used;
- (4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (5) a spill containment plan in the event of a release of used oil; and
- (6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

- (1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;
- (2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;
- (3) The storage tank or container is clearly labeled with the words "Used Oil;"
- (4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;
- (5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and
- (6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the

information submitted to apply for a registration number within 20 days of the change.

#### **13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D**

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) whether the center will accept DIYer used oil;
- (4) the type of storage and secondary containment to be used;
- (5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (6) a spill containment plan in the event of a release of used oil; and
- (7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

- (1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;
- (2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;
- (3) The storage tank or container is clearly labeled with the words "Used Oil;"
- (4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;
- (5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and
- (6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

#### **13.3 USED OIL AGGREGATION POINTS**

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

#### **13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES**

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A

person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

- (1) The name and address of the operator;
- (2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;
- (3) Maps of all transfer facilities, if applicable;
- (4) The methods to be used for collecting, storing, and delivering used oil;
- (5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;
- (6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;
- (7) The methods of disposing of any waste by-products;
- (8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;
- (9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;
- (10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;
- (11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;
- (12) A closure plan meeting the requirements of R315-15-11;
- (13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;
- (14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;
- (15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;
- (16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:
  - (i) Personal safety equipment;
  - (ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;
  - (iii) A minimum number and qualification of workers involved in the loading or off-loading operations;
  - (iv) Braking and blocking of rail car wheels;
  - (v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;
  - (vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process;
  - (vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;
  - (viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

- (1) the EPA identification number, name, and address of the transporter/transfer facility;
- (2) the calendar year covered by the report;
- (3) the total amount of used oil transported;
- (4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transporters used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in 2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), 485111 (Mixed Mode Transit Systems), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transporters and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transporters used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

### 13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or re-refining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to

ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or re-refining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or re-refined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

### 13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) The name and address of the operator;

(ii) The location of the facility;

(iii) The type of containment and type and capacity of storage;

(iv) The type of burner to be used;

(v) The methods of disposing of any waste by-products;

(vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of R315-15-11;

(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(xii) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-270-1, and that implements the requirements of R315-264-340 through 351, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) It stores used oil in the manner described in R315-15-6.5;

(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) It complies with R315-15-6.3 and R315-15-6.7;

(v) It modifies its closure plan required under R315-264-110 through 120 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required R315-264-140 Through 151 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil

burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(i) The EPA identification number, name, and address of the burner facility;

(ii) The calendar year covered by the report; and

(iii) The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

#### 13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-261 Appendix I, or a method shown to be equivalent under R315-260-21.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate

without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

#### 13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

- (1) business name;
- (2) address to include:
  - (i) mailing address; and
  - (ii) site address if different from mailing address
- (3) telephone number
- (4) name of business owner;
- (5) name of business operator;
- (6) permit/registration number; and
- (7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

- (1) completion and approval of the application required by R315-15-13.8(a); and
- (2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

#### R315-15-14. DIYer Reimbursement.

##### 14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Director shall pay a semi-annual recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to \$0.25 per gallon, subject to availability of funds and the priorities of Utah Code Annotated 19-6-720.

##### 14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during the

semi-annual collection periods of January through June and July through December for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the semi-annual collection period.

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than 60 days after the end of the semi-annual collection period for which reimbursement is requested will be paid during the next reimbursement period.

(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.

#### R315-15-15. Issuance, Renewal, and Revocation of Permits and Registrations.

##### 15.1 PUBLIC COMMENTS AND HEARING.

(a) The Director shall:

(1) determine if the permit application or modification request is complete and meets all requirements of R315-15-13;

(2) publish notice of the proposed permit in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county in which the proposed permitted facility is located;

(3) provide a 15-day public comment period from the date of publication to allow the public time to submit written comments;

(4) consider submitted public comments received within the comment period; and

(5) send a written decision to the applicant and to persons submitting comments,

(b) The Director's decision under R315-15-15.1(a) may be appealed in accordance with Utah Administrative Code R305-7.

(c) Duration of Permits. Used oil permits shall be effective for a fixed term not to exceed ten years. Any Permittee holding a permit issued on or before January 1, 2005 who wants to continue operating shall submit an application for a new permit not later than 180 days after January 1, 2015. The term of a permit shall not be extended by modification to the permit.

(d) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under R315-15-13, at least 180 days prior to the expiration date of the current permit. The permit application shall contain all the materials required by R315-15-13.

(2) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(e) Effect. Permits continued under this section remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit that has been continued;

(2) Issue a notice of intent to deny the new permit under R315-15-15.2. If the permit is denied, the owner or operator is required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under R315-15-15.2 with appropriate conditions;

(4) Take other actions authorized by these rules

(g) Five-Year Review of Permit. Each used oil permit, including the costs of closure and post closure care issued under R315-15-13, shall be reviewed by the Director five years after the permit's issuance, or when the Director determines that a permit requires review and modification.

##### 15.2 MODIFICATION AND REVOCATION OF

**PERMITS, REGISTRATIONS AND HANDLER CERTIFICATES.**

(a) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. The permit modification requests shall not be implemented until approval of the Director.

Violation of any permit or registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including denial of an application for permit, registration, or used oil handler certificate.

(b) Request for agency action. The owner or operator of a facility may contest an order associated with modification, renewal, or termination in accordance with Utah Administrative Code R305-7.

**R315-15-16. Grants.****16.1 STATUTORY AUTHORITY.**

Utah Code Annotated 19-6-720 authorizes the Division of Waste Management and Radiation Control to award grants, as funds are available, for the following:

- (a) Used oil collection centers;
- (b) Used oil collection events;
- (c) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs; and
- (d) Public education programs and outreach.

**16.2 ELIGIBILITY AND APPLICATION.**

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Application Package, made available by the Director, shall be completed and submitted to the Director for consideration.

**16.3 LIMITATIONS.**

(a) The grantee shall commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

**16.4 USED OIL TRANSPORTATION COSTS FROM USED OIL COLLECTION CENTERS**

(a) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a used oil collection center (UOCC) located within a rural area that meets the following criteria:

- (1) accepts only:
  - (i) DIYER used oil, Type A UOCC; or
  - (ii) both DIYER and farmer used oil, Type B UOCC
- (2) is located in a Class 4 municipality, as described in Section 10-2-301, or in an area with a population less than that of a Class 4 municipality;
- (3) stays active with the Used Oil Program for at least two years after receiving the grant or the grant funds shall be reimbursed;
- (4) completes a grant application that is signed by the owner of the collection center; and
- (5) obtains a minimum of one transportation bid from a permitted used oil transporter in accordance with Section R33-5-104.

(b) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a Type C Used Oil Collection Center if the UOCC meets the following criteria:

- (1) Is a Utah municipal landfill that is registered as a Type

C used oil collection center with the Division of Waste Management and Radiation Control;

(2) Only allows small businesses that qualify as a Very Small Quantity Generator (VSQGs) of hazardous waste, to deliver used oil in a volume of less than 55 gallons per visit per day; and

(3) One transportation bid from a permitted used oil transporter is submitted for requests less than \$1,000.00, or three bids if over \$1,000.00.

(c) Grant funds may be considered for costs for a permitted used oil transporter to collect and transport used oil from a Used Oil Collection Center that does not meet the criteria outlined in Subsections R315-15-16.4(a) or (b) on a case-by-case basis.

**16.5 FUNDING**

(a) An applicant is not required to provide matching funds.

(b) The Director may withhold 10 percent of the funds from a grant recipient until the grant is completed and the final documentation submitted.

(c) The Director may approve a request for advance payment based upon justification offered by the applicant.

(d) A grant application shall include all bids for expenses to be paid by the grant in accordance with Rule R33-5.

**16.6 APPLICATION CONTENTS**

(a) A grant application form is part of the grant application package available from the Director and consists of the following sections:

(1) Applicant Information. The applicant shall include basic information regarding the applicant and the individual or entity responsible for the project implementation.

(2) Used Oil Project Request for Funding. The project funding request shall include the following:

(i) Background. The background information shall include a description of:

(A) The absence or existence of used oil collection opportunities in the area to be served by the used oil project; and

(B) The population of the proposed project area.

(ii) Project Description and Goals; and

(iii) Funding Sources.

(3) Project Budget. The project budget may include a cost breakdown of the following categories:

(i) Used oil transportation and disposal expenses.

(ii) Contractor or consultant expenses.

(iii) Construction expenses.

(iv) Equipment.

(v) Materials and supplies.

(vi) Public education and outreach.

(4) Eligibility summary. The applicant shall include, as applicable, the following information for each:

(i) Used oil collection center:

(A) Name of the facility;

(B) Physical address; and

(C) Phone number; and

(ii) Curbside collection program:

(A) Name, address, and phone number of the program operator;

(B) Number of residents served by the program; and

(C) Collection schedule

(5) Certification Statement and Signature.

**16.7 APPLICATION SUBMISSION**

Applicants shall submit an original application using the application package of Subsection R315-15-16.2(b) to the Director.

**16.8 AUDIT REQUIREMENTS**

(a) A grant may be subject to a desk or field audit.

(b) The grantee is responsible for maintaining source documents substantiating the expenditures claimed and shall make them available at the time of an audit.

(c) Records relating to the implemented program may include:

- (1) Expenditure ledger;
- (2) Paid warrants;
- (3) Contracts;
- (4) Change orders;
- (5) Invoices; and
- (6) Cancelled checks.

(c) Records shall be maintained for a period of three years from the date of final payment by the State.

#### 16.9 ADMINISTRATIVE PROCEDURES

(a) A grantee shall submit a final report within one month of completion of the project or by a later date specified by the Director. The report shall include the following information:

- (1) A description of the completed used oil collection program, including any amendments;
- (2) The estimated number of participants in the program;
- (3) A description of the program's public education efforts;
- (4) A description of measures taken to continue the program; and

(5) A complete and final itemization of how grant funds were expended.

#### 16.10 FAILURE TO COMPLY

Failure to comply with the agreement requirements may result in the Director terminating, suspending, or requiring the grantee to repay some or all of the grant.

#### 16.11 GRANT PAYMENTS

(a) General Requirements.

(1) The Director shall reimburse the grantee for performing only those services as specified in the grant application. Any deviations from the use of funds specified in the application shall be approved by the Director before an expenditure for that item is made.

(2) Payment shall be made to the grantee only. It shall be the responsibility of the grantee to pay all contractors and subcontractors for purchased goods and services.

(3) The Director may withhold and retain ten percent of the grant award until the grant is completed and the final documentation submitted.

(4) Requests for advance payment shall be submitted in writing to the Director and demonstrate that the grantee will incur a specific expenditure(s) prior to or shortly after payment for the State. Suggested documentation includes:

- (i) Purchase orders; and
- (ii) Invoices.

(5) The Director may partially or fully deny advance payment requests.

(b) Submittal of payment requests.

(1) All payment requests shall be submitted using the completed Payment Request Form of the grant application package of Subsection R315-15-16.2(b) and signed by the individual authorized in the grant application.

(2) Payment requests shall include an itemization of all expenses by budget expense type.

(3) Payment requests shall include copies of documents supporting the claimed expenses, such as bids, receipts, canceled checks, and sole source justifications. Supporting documents shall contain sufficient information to establish purchases made or costs incurred. At a minimum, the documentation should include the name, amount, and date of purchase for the expense.

(4) All payment requests shall be submitted to the Director.

#### 16.12 RELEASE OF FUNDS

(a) The Director shall review and approve all payment requests before payment is made. The grantee shall meet the following conditions before the Director shall process a payment request during the project term:

- (1) The grantee has submitted any required project reports

and the Director has deemed them to be satisfactory;

(2) The Director has received copies of applicable contracts and/or subcontracts; and

(3) The grantee has received applicable permits or permit waivers from governmental agencies and the Director has received copies of such documentation.

(b) After Director approval, payment requests shall be forwarded to the Division of Finance for issuance of pay warrants.

(c) If ten percent of the total grant was previously withheld, the Director shall release the remaining ten percent upon receipt and acceptance of the final report and final payment request.

#### 16.13 GRANT CLOSEOUT

(a) The Director shall close out the grant when it is determined that all applicable administrative actions and all required work of the grant have been completed.

(b) Upon receipt of the final report, the Director shall ensure all work has been completed and all unexpended funds are refunded to the State.

(c) The grantee's obligations under the Terms and Conditions of the grant application package of Subsection R315-15-16.2(b) shall be deemed discharged only upon acceptance of the final report by the Director.

(d) The grantee shall retain all financial and project records, supporting documents, statistical records and other records of projects funded by this program. The Director, or his authorized representative, shall have access to all related records during progress of the project and for at least three years after completion.

### **R315-15-17. Wording of Financial Assurance Mechanisms.**

#### 17.1 APPLICABILITY

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Waste Management and Radiation Control located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.14.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

#### 17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

#### 17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form approved by the Director.

#### 17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

#### 17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability



Insurance Endorsement for Cleanup and Closure Form approved by the Director.

**17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE**

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

**17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE**

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

**17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE**

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form approved by the Director.

**17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES**

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form approved by the Director.

**17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY**

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

**17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY**

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form approved by the Director.

**17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY**

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

**17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY**

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

**17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY**

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

**R315-15-18. Polychlorinated Biphenyls (PCBs).**

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine the PCB content of used oil being transported is less than 50 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than 50 ppm prior to loading to the transporter's vehicle through laboratory testing following the procedures described in R315-15-18(d).

(2) Other used oils shall be certified to be less than 50 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 50 ppm based on manufacturing specifications and process knowledge.

(c) Used oil marketer PCB testing. To ensure that used oil destined to be burned for energy recovery is not a regulated waste under the TSCA regulations, used oil fuel marketers shall determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors: 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors 1262 and 1268. If other Aroclors are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors.

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used for PCBs:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors shall be reported with a reporting limit of 1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor, and the Aroclor is unlikely to be significantly altered in homologue composition such as weathering, Aroclors listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

**KEY: grants, registration, recycling, used oil  
April 15, 2019**

**Notice of Continuation March 10, 2016**

**19-6-704**

**19-6-720**

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-260. Hazardous Waste Management System.**

**R315-260-1. Purpose, scope, and applicability.**

(a) Rule R315-260 provides definitions of terms, general standards, and overview information applicable to Rules R315-260 through 265 and 268.

**R315-260-2. Availability of Information and Confidentiality of Information.**

(a) Any information provided to The Director under Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 will be made available to the public to the extent and in the manner authorized by Sections 63G-2-101 through 901.

(b) Except as provided under Subsection R315-260-2(c), any person who submits information to the Director in accordance with Rules R315-15 and 101; Rules R315-260 through 266, 268, 270 and 273 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in Section 63G-2-309. Information covered by such a claim shall be disclosed by the Director only to the extent, and by means of the procedures, set forth Sections 63G-2-101 through 901 except that information required by Subsection R315-262-53(a) and Subsection R315-262-83 that is submitted to EPA in a notification of intent to export a hazardous waste shall be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, if no claim under Sections 63G-2-101 through 804 accompanies the information when it is received by the Director, it may be made available to the public without further notice to the person submitting it.

(c)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest, EPA Form 8700-22, a Hazardous Waste Manifest Continuation Sheet, EPA Form 8700-22A, or an electronic manifest format that may be prepared and used in accordance with Subsection R315-262-20(a)(3).

(2) EPA shall make any electronic manifest that is prepared and used in accordance with Subsection R315-262-20(a)(3), or any paper manifest that is submitted to the system under Subsection R315-264-71(a)(6) or Subsection 40 CFR 265.71(a)(6), which is adopted by reference, available to the public under Section R315-260-2 when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

**R315-260-4. References to Other Statutes and Regulations.**

(a) Federal statutes and regulations that are cited in Rules R315-260 through 266, 268, 270, 273 and 124 that are not specifically adopted by reference shall be used as guidance in interpreting the Rules R315-260 through 266, 268, 270, 273 and 124.

(b) Any reference to the "Department of Transportation" or "DOT" in Rules R315-260 through 266, 268, 270, 273 and 124 shall mean the "U.S. Department of Transportation".

**R315-260-5. Inspections.**

Any duly authorized officer, employee or representative of the Department or the Director may, in accordance with Section 19-6-109, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated or disposed of for the purpose of ascertaining the compliance with Rules R315-15, R315-101,

R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Inspectors may also have access to and the right to make copies of any records, either in hard copy or electronic format, relating to compliance with Rules R315-15, R315-101, R315-124, R315-260 through 266, R315-268, R315-270, and R315-273. Inspectors may also take photographs and make video and audio recordings while conducting authorized activities.

**R315-260-10. Definitions.**

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

(3) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(4) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(5) "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

(6) "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under Subsection R315-261-4(j), and accumulates the waste for more than ten days.

(7) "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under Rules R315-260 through 266, R315-268, R315-270, and R315-273.

(8) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(9) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(10) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(11) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(12) "Battery" means a device consisting of one or more

electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(13) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

(14) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(15) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(16) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

(17) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through 216 is also subject to Section R315-262-211 when accumulating unwanted material or hazardous waste, or both.

(18) "Certification" means a statement of professional opinion based upon knowledge and belief.

(19) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure

requirements. See also "active portion" and "inactive portion".

(20) "Component" means either the tank or ancillary equipment of a tank system.

(21) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(22) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

(23) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(24) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

(25) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(26) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(27) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(28) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

(29) "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and  
(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

(30) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance

with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

(31) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(32) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(33) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(34) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(35) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(36) "Division" means the Division of Waste Management and Radiation Control.

(37) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earth materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(38) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

(39) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

(40) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(41) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

(42) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment,

storage, or disposal facility.

(43) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

(44) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21.

(45) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

(46) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(47) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(48) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing

hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-260-10(c)(48)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

(49) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(50) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(51) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

(52) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(53) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(54) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(55) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(56) "Ground water" means water below the land surface in a zone of saturation.

(57) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and  
(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

(58) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

(59) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(59), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(60) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

(61) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the

largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(62) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(63) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

(64) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

(65) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(66) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(67) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;

(ii) Lime kilns;

(iii) Aggregate kilns;

(iv) Phosphate kilns;

(v) Coke ovens;

(vi) Blast furnaces;

(vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;

(viii) Titanium dioxide chloride process oxidation reactors;

(ix) Methane reforming furnaces;

(x) Pulping liquor recovery furnaces;

(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary

materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

(68) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(69) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(70) "Injection well" means a well into which fluids are injected. See also "underground injection".

(71) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(72) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(73) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

(74) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(75) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(76) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(77) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(78) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(79) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(80) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or

contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(81) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(82) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(83) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(84) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(85) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

(86) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

(87) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(88) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(89) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

(90) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(91) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(92) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

(93) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank

system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

(94) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

(95) "Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

(96) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(97) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(98) "Open burning" means the combustion of any material without the following characteristics:

- (i) Control of combustion air to maintain adequate temperature for efficient combustion,
- (ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

(99) "Operator" means the person responsible for the overall operation of a facility.

(100) "Owner" means the person who owns a facility or part of a facility.

(101) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(102) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and

dichlorinated biphenyls by 5.

(103) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

(104) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(105) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(106) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(107) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

(108) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (i) Is a new animal drug under FFDCa section 201(w), or
- (ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (iii) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)(108)(i) or (ii).

(109) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(110) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(111) "POHC's" means principle organic hazardous constituents.

(112) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(113) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(114) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(115) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

(116) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(117) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(118) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(119) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(120)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

(121) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(122) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(123) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(124) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(125) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(126) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(127) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection

R315-261-33(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(128) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(129) "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

(130) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(131) "Sorb" means to either adsorb or absorb, or both.

(132) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(133) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(134) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

(135) "State" means the state of Utah.

(136) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(137) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(138) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(139) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood,



concrete, steel, plastic, which provide structural support.

(140) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(141) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(142) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

(143) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

(144) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(145) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

(146) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

(147) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

(148) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(149)(i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,

(B) what pretreatment, if any, is required,

(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(150) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(151) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(152) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

(153) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

(154) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(155) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(156) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4;

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-273-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(157) Universal waste handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(158) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(159) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(160) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(161) Used oil is defined in Subsection 19-6-703(19).

(162) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment,

transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(163) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(164) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(165) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(166) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

(167) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(168) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(169) "Well injection": See "underground injection"

(170) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(171) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

#### **R315-260-11. References.**

(a) For purposes of Rules R315-260 through 266, 268, 270, and 273, Rule R315-15 and Rule R315-101, the references of 40 CFR 260.11, 2015 ed, as amended by 81 FR 85806, November 28, 2016, are adopted and incorporated by reference.

#### **R315-260-12. Definitions for Rule R315-101.**

(a) For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following terms are defined:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data,  $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$ , where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data,  $C = \exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} \times H/(n - 1)^{1/2})$ , where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under Rule R315-101, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

#### **R315-260-19. Variances Authorized.**

(a) Variances shall be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.

(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Director. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Director requires.

(f) Nothing in Subsection R315-260-19(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in Section 19-6-111. A person applying for a variance under Section R315-263-32 shall provide such information described in Subsection R315-260-19(d) as the Director determines.

#### **R315-260-20. Petition to Amend Rules.**

(a) It is the intent of the Board to insure the compatibility and equivalency of Rules R315-260 through 266, 268, 270, 273 and 124 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in Rules R315-260 through 266, 268, 270, 273, Rule R315-15 Rule R315-101, R315-102, and R315-124. A petition shall be considered under the procedures outlined in Section 63G-3-601 and Rule R15-2.

#### **R315-260-21. Petitions for Equivalent Testing or Analytical Methods.**

(a) Any person seeking to add a testing or analytical method to Rules R315-261, R315-264, or R315-265 may petition for a regulatory amendment under Section R315-260-21 and Section R315-260-20. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in Rules R315-261, R315-264, or R315-265, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include, in addition to the information required by Section R315-260-20:

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;

(2) A description of the types of wastes or waste matrices for which the proposed method may be used;

(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Rules R315-261, R315-264, or R315-265;

(4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which the Board may reasonably require to evaluate the method.

(d) If the Board amends the rules to permit use of a new testing method, the method shall be incorporated by reference in Section R315-260-11.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the Director and the decision of EPA shall be binding upon the Board and the Director.

#### **R315-260-22. Petitions to Amend Rule to Exclude a Waste Produced at a Particular Facility.**

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Sections R315-261-30 through 35 may petition for a regulatory amendment under Section R315-260-22 and Section R315-260-20. To be successful:

(1) The petitioner shall demonstrate to the satisfaction of the Board that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Sections 261-20 through 24.

(b) The procedures in Sections R315-260-22 and R315-260-20 may also be used to petition the Board for a regulatory amendment to exclude from Subsections R315-261-3(a)(2)(ii) or (c), a waste which is described in Subsections R315-261-3(a)(2)(ii) or (c) and is either a waste listed Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by Subsection R315-260-22(a). Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration shall be made with respect to the waste mixture as a whole; analyses shall be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors, including additional constituents, that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Sections R315-261-20 through 24.

(c) If the waste is listed with codes "I", "C", "R", or "E", in Sections R315-261-30 through 35,

(1) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of

Sections R315-261-20 through 24.

(d) If the waste is listed with code "T" in Sections R315-261-30 through 35,

(1) The petitioner shall demonstrate that the waste:

(i) Does not contain the constituent or constituents, as defined in appendix VII of Rule R315-261, that caused the waste to be listed; or

(ii) Although containing one or more of the hazardous constituents, as defined in appendix VII of Rule R315-261, that caused the waste to be listed, does not meet the criterion of Subsection R315-261-11(a)(3) when considering the factors in Subsections R315-261-11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections R315-261.21 Through 24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Sections R315-261-20 through 24.

(e) If the waste is listed with the code "H" in Sections R315-261-30 through 35,

(1) The petitioner shall demonstrate that the waste does not meet the criterion of Subsection R315-261-11(a)(2); and

(2) Based on a complete application, the Board shall determine, where it has a reasonable basis to believe that additional factors, including additional constituents, other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections R315-261-21 through 24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Sections R315-261-20 through 24.

(f) Reserved.

(g) Reserved.

(h) Demonstration samples shall consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition shall include, in addition to the information required by subsection R315-260-20(b):

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Subsection R315-261-11(a)(3);

(8) A description of the methodologies and equipment

used to obtain the representative samples;

(9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(10) A description of the tests performed, including results;

(11) The names and model numbers of the instruments used in performing the tests; and

(12) The following statement signed by the generator of the waste or his authorized representative:

(i) I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(j) After receiving a petition for an exclusion, the Board may request any additional information which the Board may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Board may exclude only part of the waste for which the demonstration is submitted where it has reason to believe that variability of the waste justifies a partial exclusion.

(m) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the Director and the decision of EPA will be binding upon the Board and the Director unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under Section R315-260-22 for the relief sought.

#### **R315-260-23. Petitions to Amend Rule R315-273 to Include Additional Hazardous Wastes.**

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule R315-273 may petition for a regulatory amendment under Section R315-260-23 Section R315-260-20, and Sections R315-273-80 and 81.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Board that regulation under the universal waste regulations of Rule R315-273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition shall include the information required by Subsection R315-260-20(b). The petition should also address as many of the factors listed in Section R315-273-81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Board shall grant or deny a petition using the factors listed in Section R315-273-81. The decision shall be based on the weight of evidence showing that regulation under Rule R315-273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Board may request additional information needed to evaluate the merits of the petition.

#### **R315-260-30. Non-Waste Determinations and Exclusion from Classification as a Solid Waste.**

In accordance with the standards and criteria in Sections R315-260-31 and 34 and the procedures in Section R315-260-33, the Director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled, as defined in Subsection R315-261-1(c)(8);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

**R315-260-31. Standards and Criteria for Exclusion from Classification as a Solid Waste.**

(a) The Director may grant requests for exclusion from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If exclusion is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur, for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling;

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Director may grant requests for exclusion from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

(c) The Director may grant requests for exclusion from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the change in classification is sought is commodity-like will be based on whether the hazardous secondary material is legitimately

recycled as specified in Section R315-260-43 and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material, e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading; and

(5) Whether the partially-reclaimed material is handled to minimize loss.

**R315-260-32. Reclassification as a Boiler.**

In accordance with the standards and criteria in the definition of a boiler found in Section R315-260-10, and the procedures in Section R315-260-33, the Board may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Subsection R315-260-10, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

**R315-260-33. Procedures for Exclusion from Classification as a Solid Waste, for Reclassification as a Boiler, or for Non-waste Determinations.**

The Director shall use the following procedures in evaluating applications for exclusion from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant shall apply to the Director for the exclusion, reclassification, or non-waste determination. The application shall address the relevant criteria contained in Sections R315-260-31, 32, or 34, as applicable.

(b) The Director shall evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision shall be provided by newspaper advertisement or radio broadcast in the locality where the facility requesting the exclusion, reclassification, or non-waste determination is located. The Director shall accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at the Director's discretion. The Director shall issue a final decision after receipt of comments and after the hearing, if any.

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in Sections R315-260-31 or 34 upon which a exclusion determination or non-waste determination has been based, the applicant shall send a description of the change in circumstances to the Director. The Director may issue a

determination that the hazardous secondary material continues to meet the relevant criteria of the exclusion determination or non-waste determination or may require the facility to re-apply for the exclusion determination or non-waste determination.

(d) Exclusion determinations and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities shall re-apply for a exclusion determination or non-waste determination. If a facility re-applies for a exclusion determination or non-waste determination within six months, the facility may continue to operate under an expired exclusion determination or non-waste determination until receiving a decision on their re-application from the Director.

(e) Facilities receiving a exclusion determination or non-waste determination shall provide notification as required by Section R315-260-42.

#### **R315-260-34. Standards and Criteria for Non-Waste Determinations.**

(a) An applicant may apply to the Director for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in Subsections R315-260-34(b) or (c), as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion.

(b) The Director may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on the following criteria:

(1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned, for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements;

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under Sections R315-261-2 or 4.

(c) The Director may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste, for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements;

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned, for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements;

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under Sections R315-261-2 or 4.

#### **R315-260-40. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.**

(a) The Director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Subsection R315-261-6(a)(2)(iii) should be regulated under Subsection R315-261-6(b) and (c). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Director shall consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

(2) The procedures for this decision are set forth in R315-260-41.

#### **R315-260-41. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.**

The Director shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in Subsection R315-261-6(a)(2)(iii) under the provisions of Subsection R315-261-6(b) and (c), rather than under the provisions of Section R315-266-70.

(a) If a generator is accumulating the waste, the Director shall issue a notice setting forth the factual basis for the decision and stating that the person shall comply with the applicable requirements of Sections R315-262-10 through 12, R315-262-30 through 34, R315-262-40 through 44, and R315-262-50 through 58. The notice shall become final within 30 days, unless a request for agency action is made under the requirements of the Administrative Procedures Act.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person shall obtain a permit in accordance with all applicable provisions of Rule R315-270 and 124. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Director's decision, he may do so in accordance with the Administrative Procedures Act.

#### **R315-260-42. Notification Requirement for Hazardous Secondary Materials.**

(a) Facilities managing hazardous secondary materials

under Section R315-260-30, or Subsections R315-261-4(a)(23), (24), (25), or (27) shall send a notification prior to operating under the regulatory provision and by March 1 of each even numbered year thereafter to the Director using EPA Form 8700-12 that includes the following information:

- (1) The name, address, and EPA ID number, if applicable, of the facility;
- (2) The name and telephone number of a contact person;
- (3) The NAICS code of the facility;
- (4) The regulation under which the hazardous secondary materials shall be managed;
- (5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with Subsections R315-261-4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);
- (6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (7) A list of hazardous secondary materials that shall be managed according to the regulation, reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes;
- (8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (9) The quantity of each hazardous secondary material to be managed annually; and
- (10) The certification, included in EPA Form 8700-12, signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility shall notify the Director within thirty days using EPA Form 8700-12. For purposes of Section R315-260-42, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

#### **R315-260-43. Legitimate Recycling of Hazardous Secondary Materials.**

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations shall be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons shall address all the requirements of Subsections R315-260-43(a)(1) through (3) and shall consider the requirements of Subsection R315-260-43(b).

(1) Legitimate recycling shall involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

- (i) Contributes valuable ingredients to a product or intermediate; or
  - (ii) Replaces a catalyst or carrier in the recycling process;
- or
- (iii) Is the source of a valuable constituent recovered in the recycling process; or
  - (iv) Is recovered or regenerated by the recycling process;
- or
- (v) Is used as an effective substitute for a commercial product.

(2) The recycling process shall produce a valuable product or intermediate. The product or intermediate is valuable if it is:

- (i) Sold to a third party; or
- (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material shall be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material shall be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b) The following factor shall be considered in making a determination as to the overall legitimacy of a specific recycling activity.

- (1) The product of the recycling process does not:
  - (i) Contain significant concentrations of any hazardous constituents found in Section R315-261-1092 that are not found in analogous products; or
  - (ii) Contain concentrations of hazardous constituents found in Section R315-261-1092 at levels that are significantly elevated from those found in analogous products; or
  - (iii) Exhibit a hazardous characteristic, as defined in Subsections R315-261-20 through 24, that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons shall evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

**KEY: hazardous waste  
April 15, 2019**

**19-1-301  
19-6-105  
19-6-106**

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-261. General Requirements -- Identification and Listing of Hazardous Waste.**

**R315-261-1. Purpose and Scope.**

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under Rules R315-262 through 265, 268, 270, and 124 and which are subject to the notification requirements of these rules.

(1) Sections R315-261-1 through 9 define the terms "solid waste" and "hazardous waste", identify those wastes which are excluded from regulation under Rules R315-262 through R315-266, R315-268 and R315-270 and establish special management requirements for hazardous waste produced by very small quantity generators and hazardous waste which is recycled.

(2) Sections R315-261-10 and 11 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Sections R315-261-20 through 24 identify characteristics of hazardous waste.

(4) Sections R315-261-30 through 35 list particular hazardous wastes.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Title 19 Chapter 6. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) Rule R315-261 identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in Rule R315-261, or is not a hazardous waste identified or listed in Rule R315-261, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Director has reason to believe that the material may be a solid waste within the meaning of Subsection 19-6-102(13) and a hazardous waste within the meaning of Subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

(c) For the purposes of Sections R315-261-2 and 261-6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in Section R315-260-10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of Subsections R315-261-4(a)(23), and (24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in Subsection R315-266-100(d)(1) through (3), and if the residuals meet the requirements specified in Section R315-266-112.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient, including use as an intermediate, in an industrial process to make a product, for example, distillation bottoms from one process used as

feedstock in another process. However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials; or

(ii) Employed in a particular function or application as an effective substitute for a commercial product, for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment.

(6) "Scrap metal" is bits and pieces of metal parts; for example bars, turnings, rods, sheets, or wire; or metal pieces that may be combined together with bolts or soldering; for example radiators, scrap automobiles, or railroad box cars; which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, i.e., sorted, and, fines, drosses and related materials which have been agglomerated. Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled Subsection R315-261-4(a)(14).

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

**R315-261-2. Definition of Solid Waste.**

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:



- (A) Abandoned, as explained in Subsection R315-261-2(b); or
- (B) Recycled, as explained in Subsection R315-261-2(c); or
- (C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).
  - (b) Materials are solid waste if they are abandoned by being:
    - (1) Disposed of; or
    - (2) Burned or incinerated; or
    - (3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
    - (4) Sham recycled, as explained in Subsection R315-261-2(g)
  - (c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).
    - (i) Used in a manner constituting disposal.
      - (i) Materials noted with a "\*" in Column 1 of Table 1 are solid wastes when they are:
        - (A) Applied to or placed on the land in a manner that constitutes disposal; or
        - (B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).
      - (ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.
        - (2) Burning for energy recovery.
          - (i) Materials noted with a "\*" in column 2 of Table 1 are solid wastes when they are:
            - (A) Burned to recover energy;
            - (B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.
          - (ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are themselves fuels.
        - (3) Reclaimed. Materials noted with a "-" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "\*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).
        - (4) Accumulated speculatively. Materials noted with a "\*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

(listed in 261-31 or 261-32)				
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 261-33	(*)	(*)		
Scrap metal that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.  
 Note 2: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in Section R315-261-1.

- (d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:
  - (1) Hazardous Waste Nos. F020; F021, unless used as an ingredient to make a product at the site of generation; F022; F023; F026; and F028.
  - (2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:
    - (i) The material shall contain a bromine concentration of at least 45%; and
    - (ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and
    - (iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.
  - (3) The Board shall use the following criteria to add wastes to Subsection R315-261-2(d)(1) or (2):
    - (i)(A) The materials are ordinarily disposed of, burned, or incinerated; or
    - (B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
    - (ii) The material may pose a substantial hazard to human health and the environment when recycled.
- (e) Materials that are not solid waste when recycled.
  - (1) Materials are not solid wastes when they can be shown to be recycled by being:
    - (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
    - (ii) Used or reused as effective substitutes for commercial products; or
    - (iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials shall be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Subsection R315-261-4(a)(17) apply rather than Subsection R315-261-2(e)(1)(iii).
  - (2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

Table 1

	Use Constituting Disposal 261-2(c)(1)	Energy recovery/fuel 261-2(c)(2)	Reclamation 261-2(c)(3) except as provided in 261-4(a)(17) 261-4(a)(23) 261-4(a)(24) or 261-4(a)(27)	Speculative accumulation 261-2(c)(4)
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products	(*)	(*)	(*)	(*)

- (i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
- (ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
- (iii) Materials accumulated speculatively; or
- (iv) Materials listed in Subsections R315-261-2(d)(1) and (d)(2).
- (f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.
- (g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

### R315-261-3. Definition of Hazardous Waste.

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to Section R315-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride,

tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents-Provided, That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents-Provided That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals

accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050; crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169; clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170; spent hydrotreating catalyst, EPA Hazardous Waste No. K171; and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv)(D), de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35. Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in Section R315-261.32: wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly

flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32: organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156. Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous

waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces, as defined in Section R315-260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 high temperature metals recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under Rules R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the landfill receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under Rules R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in Section R315-261-32: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in Section R315-261-32: - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172.

(d) Any solid waste described in Subsection R315-261-3(c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under Sections R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g)(1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, as applicable, even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed.

#### **R315-261-4. Exclusions.**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated

sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the

conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from

kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to

be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated

precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent Maximum Allowable Total Concentration in Fertilizer, per Unit (1% of Zinc ppm)

Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8

Mercury 0.3

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full

responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-



4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all three factors in Subsection R315-260-43(a) and how the factor in Subsection R315-260-43(b) was considered. Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or

intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(I) Does the available information indicate that the reclamation process is legitimate pursuant to Section R315-260-43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources including the reclamation facility and audit reports about the reclamation process.

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per Subsection R315-261-4(a)(24)(vi)(F)? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per Section R315-260-42, including the requirement in Subsection R315-260-42(a)(5) to notify the Director whether the reclaimer or intermediate facility has financial assurance.

(III) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has not been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(IV) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(V) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available

information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

(I) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to (insert name(s) of reclamation facility and any intermediate facility), reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(E) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(F) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(vii) In addition, all persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of Subsection R315-261-4(a)(24)(i)-(v), excepting Subsection R315-261-4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities, and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification shall be submitted at least sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number, UN/NA, for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the

hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported, for example mode of transportation vehicle including air, highway, rail and water, and types of containers including drums, boxes and tanks;

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there, for purposes of this section, the terms "EPA Acknowledgment of Consent", "country of import" and "country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in Section R315-261-4 refer to hazardous secondary materials, rather than hazardous waste:

(ii) Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system.

(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-4(a)(25)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-4(a)(25)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under Subsection R315-261-4(a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to Subsection R315-261-4(a)(25)(i) within thirty days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent shall accompany the shipment. The shipment shall conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator shall re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with Subsection R315-261-4(a)(25)(iii) and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a)(25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system. Such reports shall include the following information:

(A) Name, mailing and site address, and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number, where applicable, for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and

that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under Subsection R315-261-4(a)(25) shall provide notification as required by Section R315-260-42.

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the

hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxic Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through

200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and

dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;
- (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast furnaces;
- (M) Iron blast furnace slag;
- (N) Treated residue from roasting/leaching of chrome ore;
- (O) Process wastewater from primary magnesium processing by the anhydrous process;
- (P) Process wastewater from phosphoric acid production;
- (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- (S) Chloride process waste solids from titanium tetrachloride production;
- (T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

- (A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
- (B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous

waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections

R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for

transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of



treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

- (i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;
- (ii) The date the shipment was received;
- (iii) The quantity of waste accepted;
- (iv) The quantity of "as received" waste in storage each day;
- (v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- (vi) The date the treatability study was concluded;
- (vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

- (i) The name, address, and EPA identification number of the facility conducting the treatability studies;
- (ii) The types (by process) of treatability studies conducted;
- (iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;
- (iv) The total quantity of waste in storage each day;
- (v) The quantity and types of waste subjected to treatability studies;
- (vi) When each treatability study was conducted;
- (vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused

samples are returned to the sample originator under the Subsection R315-261-4(e) exemption.

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming

to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

(i) Reserved

(j)(1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under Rules R315-262 through 268, R315-270 or R315-124, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste -- Do Not Reuse;"

(iii) The airbag waste is sent directly to either

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in Section R315-260-10;

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste, i.e., airbag modules or airbag inflators, in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste, i.e., airbag modules and airbag inflators, received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records, e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of Rule R315-262.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under Subsection R315-261-2(g).

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subsections R315-261-6(b) and (c), except for the materials listed in Subsections R315-261-6(a)(2) and (a)(3). Hazardous wastes that are recycled shall be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of Section R315-261-6 but are regulated under Sections R315-266-20 through 23, Section R315-266-70, Section R315-266-80, Sections R315-266-100 through 112, Sections R315-266-200 through 206, and Sections R315-266-210, 220, 225, 230, 235, 240, 245, 250, 255, 260, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, and 360 and all applicable provisions in Rules R315-268, 270 and 124.

(i) Recyclable materials used in a manner constituting disposal, Sections R315-266-20 through 23;

(ii) Hazardous wastes burned, as defined in Subsection R315-266-100(a), in boilers and industrial furnaces that are not regulated under Sections R315-264-340 through 345, 347 and 351; Sections R315-370, 373, 375, 377, and 381 through 383; and Section R315-266-100 through 112;

(iii) Recyclable materials from which precious metals are reclaimed, Section R315-266-70;

(iv) Spent lead-acid batteries that are being reclaimed, Section R315-266-80.

(3) The following recyclable materials are not subject to regulation under Rules R315-262 through 268, 270 and 124, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in Section R315-262-58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b), and Section R315-262-57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Sections R315-262-50 through 58, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under Subsection R315-261-4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices, this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Subsection R315-261-4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Subsection R315-15-1.2(c) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are

### R315-261-6. Requirements for Recyclable Materials.

reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Subsection R315-15-1.2(c); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Subsection R315-15-1.2(c).

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rules R315-260 through 268, but is regulated under Rule R315-15. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Subsection R315-262-58(a)(1), for purpose of recovery is subject to the requirements of Sections R315-262-80 through 87 and 89, if it is subject to either the manifesting requirements of Rule R315-262, to the universal waste management standards of Rule R315-273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Rules R315-262 and 263 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a).

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Rules R315-264 and 265, and under Rules R315-266, 268, 270 and 124 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a). The recycling process itself is exempt from regulation except as provided in Subsection R315-261-6(d).

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in R315-261-6(a):

(i) Notification requirements under section 3010 of RCRA;

(ii) 40 CFR 265.71 and 72, which are adopted by reference; dealing with the use of the manifest and manifest discrepancies;

(iii) Subsection R315-261-6(d); and

(iv) Section R315-265-75, addressing biennial reporting requirements.

(d) Owners or operators of facilities subject to permitting requirements under Section 19-6-108 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of Sections R315-264-1030 through 1036; and Sections R315-264-1050 through 1065; 40 CFR 265.1030 through 1035, which are adopted and incorporated by reference; or 40 CFR 265.1050 through 1064.

#### **R315-261-7. Residues of Hazardous Waste in Empty Containers.**

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in Subsection R315-261-7(b), is not subject to regulation under Rules R315-261 through 266, 268, 270 or 124 or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in Subsection R315-261-7(b), is subject to regulation under Rules R315-261 through 266, 268, 270 and 124 and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters, one inch, of residue remain on the bottom of the container or inner liner, or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

#### **R315-261-8. PCB Wastes Regulated Under Toxic Substance Control Act.**

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the Toxicity Characteristic. Hazardous Waste Codes D018 through D043 only, are exempt from regulation under Rules R315-261 through 265, 268, 270 and 124, and the notification requirements of section 3010 of RCRA.

#### **R315-261-9. Requirements for Universal Waste.**

The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through 270 except as specified in Rule R315-273 and, therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 are subject to regulation under Rule R315-273:

(a) Batteries as described in Section R315-273-2;

(b) Pesticides as described in Section R315-273-3;

(c) Mercury-containing equipment as described in Section R315-273-4; and

(d) Lamps as described in Section R315-273-5.

(e) Antifreeze as described in Subsection R315-273-6(a).

(f) Aerosol cans as described in Subsection R315-273-6(b).

#### **R315-261-10. Criteria for Identifying the Characteristics of Hazardous Waste.**

(a) The Board shall identify and define a characteristic of hazardous waste in Sections R315-261-20 through 24 only upon determining that:

(1) A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating

reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

#### **R315-261-11. Criteria for Listing Hazardous Waste.**

(a) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 2 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.

(3) It contains any of the toxic constituents listed in Rule R315-261 appendix VIII and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in Subsection R315-261-11(a)(3)(vii).

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate. Substances shall be listed on appendix VIII of Rule R315-261 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria shall be designated Toxic wastes.

(b) The Board may list classes or types of solid waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102.

(c) The Board shall use the criteria for listing specified in Section R315-261-11 to establish the exclusion limits referred to in Subsection R315-261-5(c).

#### **R315-261-20. Characteristics of Hazardous Waste - General.**

(a) A solid waste, as defined in Section R315-261-2, which is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b), is a hazardous waste if it exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(b) A hazardous waste which is identified by a characteristic in Sections R315-261-20 through 24 is assigned every EPA Hazardous Waste Number that is applicable as set forth in Sections R315-261-20 through 24. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under Rules R315-262 through 265, 268 and 270.

(c) For purposes of Sections R315-261-20 through 24, the Board shall consider a sample obtained using any of the applicable sampling methods specified in appendix I of Rule R315-261 to be a representative sample within the meaning of Rule R315-260.

#### **R315-261-21. Characteristics of Hazardous Waste - Characteristic of Ignitability.**

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 degrees C (140 degrees F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80, see Section R315-260-11, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78, see Section R315-260-11.

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 degrees Fahrenheit or, regardless of the pressure at 70 degrees Fahrenheit, having an absolute pressure exceeding 104 p.s.i. at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 degrees Fahrenheit as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less, by volume, with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation, see Note 2.

(B) Using the Bureau of Explosives' Flame Projection Apparatus, see Note 1, the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus, see Note 1, there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus, see Note 1, there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals shall be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in Subsection R315-261-23(a)(8), in which case it shall be classed as an explosive,

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21,

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in Section 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

**R315-261-22. Characteristics of Hazardous Waste - Characteristic of Corrosivity.**

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 degrees C (130 degrees F) as determined by Method 1110A in "Test Methods for Evaluating Solid Waste,

Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

**R315-261-23. Characteristics of Hazardous Waste - Characteristic of Reactivity.**

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

**R315-261-24. Characteristics of Hazardous Waste - Toxicity Characteristic.**

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that Table 1. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of Section R315-261-24.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1  
Maximum Concentration of Contaminants for the  
Toxicity Characteristic

PA HW(1)	Contaminant CAS(2)	Regulatory Level (mg/L)
D004	Arsenic 7440-38-2	5.0
D005	Barium 7440-39-3	100.0
D018	Benzene 71-43-2	0.5
D006	Cadmium 7440-43-9	1.0
D019	Carbon tetrachloride 56-23-5	0.5
D020	Chlordane 57-74-9	0.03
D021	Chlorobenzene 108-90-7	100.0
D022	Chloroform 67-66-3	6.0
D007	Chromium 7440-47-3	5.0
D023	o-Cresol 95-48-7	200.0(4)
D024	m-Cresol 108-39-4	200.0(4)
D025	p-Cresol 106-44-5	200.0(4)
D026	Cresol 108-39-4	200.0(4)
D016	2,4-D 94-75-7	10.0
D027		

1,4-Dichlorobenzene D028	106-46-7	7.5
1,2-Dichloroethane D029	107-06-2	0.5
1,1-Dichloroethylene D030	75-35-4	0.7
2,4-Dinitrotoluene D012	121-14-2	0.13(3)
Endrin D031	72-20-8	0.02
Heptachlor (and its epoxide) D032	76-44-8	0.008
Hexachlorobenzene D033	118-74-1	0.13(3)
Hexachlorobutadiene D034	87-68-3	0.5
Hexachloroethane D008	67-72-1	3.0
Lead D013	7439-92-1	5.0
Lindane D009	58-89-9	0.4
Mercury D014	7439-97-6	0.2
Methoxychlor D035	72-43-5	10.0
Methyl ethyl ketone D036	78-93-3	200.0
Nitrobenzene D037	98-95-3	2.0
Pentachlorophenol D038	87-86-5	100.0
Pyridine D010	110-86-1	5.0(3)
Selenium D011	7782-49-2	1.0
Silver D039	7440-22-4	5.0
Tetrachloroethylene D015	127-18-4	0.7
Toxaphene D040	8001-35-2	0.5
Trichloroethylene D04	79-01-6	0.5
2,4,5-Trichlorophenol D042	95-95-4	400.0
2,4,6-Trichlorophenol D017	88-06-2	2.0
2,4,5-TP (Silvex) D043	93-72-1	1.0
Vinyl chloride (1) Hazardous waste number. (2) Chemical abstracts service number. (3) Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level. (4) If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.	75-01-4	0.2

from non-specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in R315-260 appendix IX which incorporates 40 CFR 260 appendix IX by reference.

TABLE 2  
Hazardous Wastes From Non-specific Sources

Industry and EPA hazardous waste No. Generic:	Hazardous waste	Hazard Code
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more, by volume, of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I)*
F004	The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F005	The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more, by volume, of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating, segregated basis, on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum	(T)

**R315-261-30. Lists of Hazardous Wastes - General.**

(a) A solid waste is a hazardous waste if it is listed in Sections R315-261-30 through 35, unless it has been excluded from this list under Sections R315-260.20 and 22.

(b) The Board shall indicate the basis for listing the classes or types of wastes listed in Sections R315-261-30 through 35 by employing one or more of the following Hazard Codes:

- (1) Ignitable Waste: (I)
- (2) Corrosive Waste: (C)
- (3) Reactive Waste: (R)
- (4) Toxicity Characteristic Waste: (E)
- (5) Acute Hazardous Waste: (H)
- (6) Toxic Waste: (T)

Appendix VII identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste or Toxic Waste in Sections R315-261-31 and 32.

(c) Each hazardous waste listed in Sections R315-261-30 through 35 is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the notification requirements of Section 3010 of the RCRA and certain recordkeeping and reporting requirements under Rules R315-262 through 265, 268, and 270.

(d) The following hazardous wastes listed in Section R315-261-31 are subject to the exclusion limits for acutely hazardous wastes established in Section R315-261-5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

**R315-261-31. Lists of Hazardous Wastes - Hazardous Wastes from Non-Specific Sources.**

(a) The following solid wastes are listed hazardous wastes

F007	Spent cyanide plating bath solutions from electroplating operations	(R,T)		and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections R315-261.31 or 32.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process	(R,T)		
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process	(R,T)		
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process	(R,T)	F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations	(R,T)		
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process	(T)		
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Sections R315-258-40, R315-264-301 or 40 CFR 265.301, which is adopted by reference. For the purposes of this listing, motor vehicle manufacturing is defined in Subsection R315-261-31(b)(4)(i) and Subsection R315-261-31(b)(4)(ii) Describes the Recordkeeping requirements for motor vehicle manufacturing facilities	(T)	F026	Wastes, except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use, as a reactant, chemical intermediate, or component in a formulating process, of tetra-, penta-, or hexachlorobenzene under alkaline conditions
F020	Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)	F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives	(H)	F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tetra-, penta-, or hexachlorobenzenes under alkaline conditions	(H)	F032	Wastewaters, except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section R315-261-35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, i.e., F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)	F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars,	(T)	F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
			F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from

- the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units, and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under Subsection R315-261-4 (a)(12)(i), if those residuals are to be disposed of
- F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing (T)
- F039 Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Sections R316-261-30 through 35. Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028. (T)
- F999 Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

\*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and

(A) the units employ a minimum of 6 hp per million gallons of treatment volume; and either

(B) the hydraulic retention time of the unit is no longer than 5 days; or

(C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles, including light duty vans, pick-up trucks, minivans, and sport utility vehicles. Facilities shall be engaged in manufacturing complete vehicles, body and chassis or unibody, or chassis only.

(ii) Generators shall maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records shall include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators shall maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Director.

**R315-261-32. Lists of Hazardous Wastes - Hazardous Wastes from Specific Sources.**

(a) The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in appendix IX.

TABLE

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Wood preservation: K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic pigments: K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)



K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)		bottoms from the production of chlorobenzenes
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)	K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene (T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments, anhydrous and hydrated,	(T)	K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene (T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)	K095	Distillation bottoms from the production of 1,1,1-trichloroethane (T)
K008	Oven residue from the production of chrome oxide green pigments	(T)	K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane (T)
Organic chemicals:			K103	Process residues from aniline extraction from the production of aniline (T)
	K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)	K104
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)	K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes (T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R,T)	K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides (C,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R,T)	K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides (I,T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)	K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides (T)
K015	Still bottoms from the distillation of benzyl chloride	(T)	K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides (T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)	K111	Product washwaters from the production of dinitrotoluene via nitration of toluene (C,T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)	K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene (T)
K018	Heavy ends from the fractionation column in ethyl chloride production	(T)	K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene (T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)	K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene (T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)	K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene (T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)	K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine (T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)	K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethane (T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)	K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane (T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)	K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane (T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)	K149	Distillation bottoms from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. This waste does not include still bottoms from the distillation of benzyl chloride. (T)
K026	Stripping still tails from the production of methy ethyl pyridines	(T)		
K027	Centrifuge and distillation residues from toluene diisocyanate production	(R,T)		
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)		
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane	(T)		
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)		
K083	Distillation bottoms from aniline production	(T)		
K085	Distillation or fractionation column	(T)		

K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups (T)		at the point of generation, contain mass loadings of any of the constituents identified in Subsection R315-261-32(c) that are equal to or greater than the corresponding Subsection R315-261-32(c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Class I or V lined landfill, (ii) disposed in a hazardous waste landfill unit subject to either Section R315-264-301 or 40 CFR 265.301, which is adopted by reference, (iii) disposed in other landfill units that are Class I or V lined landfills regulated under Rules R315-301 through 320 or meet the design criteria in Sections R315-264-301, or 40 CFR 265.301, which is adopted by reference, or (iv) treated in a combustion unit that is permitted under Rules R315-260 through 270, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in Subsection R315-261-32(b)(1). Section R315-261-32(d) describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under Sections R315-261-21 through 24 and R315-261-31 through 33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups (T)		
K156	Organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate. (T)		
K157	Wastewaters, including scrubber waters, condenser waters, washwaters, and separation waters, from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate. (T)		
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate. (T)	Inorganic chemicals: K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used (T)
K159	Organics from the treatment of thiocarbamate wastes (T)		
K161	Purification solids; including filtration, evaporation, and centrifugation solids; bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. This listing does not include K125 or K126. (R,T)	K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production (T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer, including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater, unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C shall, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they shall provide appropriate documentation, e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc., that the terms of the exclusion were met (T)	K106 K176 K177 K178	Wastewater treatment sludge from the mercury cell process in chlorine production (T) Baghouse filters from the production of antimony oxide, including filters from the production of intermediates, e.g., antimony metal or crude antimony oxide (E) Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates, e.g., antimony metal or crude antimony oxide (T) Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process (T)
		Pesticides: K031 K032 K033 K034	By-product salts generated in the production of MSMA and cacodylic acid (T) Wastewater treatment sludge from the production of chlordane (T) Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane (T) Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane (T)
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process (T)	K035	Wastewater treatment sludges generated in the production of creosote (T)
K181	Nonwastewaters from the production of dyes and/or pigments, including nonwastewaters commingled at the point of generation with nonwastewaters from other processes, that, (T)	K036	Still bottoms from toluene reclamation distillation in the production of disulfoton (T)

K037	Wastewater treatment sludges from the production of disulfoton	(T)		refining industry	
K038	Wastewater from the washing and stripping of phorate production	(T)	K169	Crude oil storage tank sediment from petroleum refining operations	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate	(T)	K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations	(T)
K040	Wastewater treatment sludge from the production of phorate	(T)	K171	Spent Hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
K041	Wastewater treatment sludge from the production of toxaphene	(T)	K172	Spent Hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)			
K043	2,6-Dichlorophenol waste from the production of 2,4-D	(T)			
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane	(T)	Iron and steel: K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K098	Untreated process wastewater from the production of toxaphene	(T)	K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry, SIC Codes 331 and 332	(C,T)
K099	Untreated wastewater from the production of 2,4-D	(T)			
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt	(T)	Primary aluminum: K088	Spent potliners from primary aluminum reduction	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C,T)	Secondary lead: K069	Emission control dust/sludge from secondary lead smelting. Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register	(T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts	(T)			
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts	(T)	K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide	(C,T)			
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide	(T)	Veterinary pharmaceuticals: K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
Explosives: K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)	K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K045	Spent carbon from the treatment of wastewater containing explosives	(R)	K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)			
K047	Pink/red water from TNT operations	(R)	Ink formulation: K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead	(T)
Petroleum refining: K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)			
K049	Slop oil emulsion solids from the petroleum refining industry	(T)			
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)	Coking: K060	Ammonia still lime sludge from coking operations	(T)
K051	API separator sludge from the petroleum refining industry	(T)	K087	Decanter tank tar sludge from coking operations	(T)
K052	Tank bottoms, leaded, from the petroleum	(T)	K141	Process residues from the recovery of coal	(T)

	tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludges from coking operations	
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	(T)
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal	(T)
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal	(T)
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	(T)
K147	Tar storage tank residues from coal tar refining	(T)
K148	Residues from coal tar distillation, including but not limited to, still bottoms	(T)

(b) Listing Specific Definitions:

(1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

TABLE		
Constituent	Chemical abstracts No.	Mass levels (kg/yr)
Aniline	62-53-3	9,300
o-Anisidine	90-04-0	110
4-Chloroaniline	106-47-8	4,800
p-Cresidine	120-71-8	660
2,4-Dimethylaniline	95-68-1	100
1,2-Phenylenediamine	95-54-5	710
1,3-Phenylenediamine	108-45-2	1,200

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in Subsections R315-261-32(d)(1) through(d)(3) and (d)(5) establish when nonwastewaters from the production of dyes/pigments would not be hazardous, these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in Subsection R315-261-32(a). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in Subsection R315-261-32(a), then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator shall maintain documentation as described in Subsection R315-261-32(d)(4).

(1) Determination based on no K181 constituents.

Generators that have knowledge; e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed; that their wastes contain none of the K181 constituents, see Subsection R315-261-32(c), can use their knowledge to determine that their waste is not K181. The generator shall document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes; e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed; to conclude that annual mass loadings for the K181 constituents are below the listing levels of Subsection R315-261-32(c). To make this determination, the generator shall:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator shall comply with the requirements of Subsection R315-261-32(d)(3) for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(3) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator shall perform all of the steps described in Subsections R315-261-32(d)(3)(i) through (d)(3)(xi) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents, see Subsection R315-261-32(c), are reasonably expected to be present in the wastes based on knowledge of the wastes; e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed.

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator shall comply with the procedures for using knowledge described in Subsection R315-261-32(d)(2) and keep the records described in Subsection R315-261-32(d)(2)(iv). For determinations based on sampling and analysis, the generator shall comply with the sampling and analysis and recordkeeping requirements described in Subsections R315-261-32(d)(3)(iii) through (xi).

(iii) Develop a waste sampling and analysis plan, or modify an existing plan, to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan shall include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(D) A detailed description of the test methods to be used, including sample preparation, clean up, if necessary, and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis shall be unbiased, precise, and representative of the wastes.

(B) The analytical measurements shall be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of Subsection R315-261-32(c).

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings, product of concentrations and waste quantity.

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in Subsection R315-261-32(c) generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results, including QA/QC data.

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations shall be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator shall keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change shall be retained.

(4) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator shall maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the hazardous waste requirements during the interim period, the generator could be subject to an enforcement action for improper management.

**R315-261-33. Lists of Hazardous Wastes - Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.**

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-261-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of, a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in Subsections R315-261-33(e) or (f).

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsection R315-261-33(e) or (f).

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection R315-261-33(e) or (f), unless the container is empty as defined in Subsection R315-261-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection R315-261-33(e) or (f), or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsection R315-261-33(e) or (f). The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in Subsection R315-261-33(e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in Subsection R315-261-33(e) or (f), such waste shall be listed in either Sections R315-261-31 or 32 or shall be identified as a hazardous waste by the characteristics set forth in Sections R315-261-20 through 24.

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Subsections R315-261-33(a) through (d), are identified as acute hazardous wastes (H). For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R

(Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE			
Hazardous waste No.	Chemical abstracts No.	Substance	
P023	107-20-0	Acetaldehyde, chloro-	P202 64-00-6 m-Cumenyl methylcarbamate.
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-	P030 otherwise specified
P057	640-19-7	Acetamide, 2-fluoro-	P031 460-19-5 Cyanogen
P058	62-74-8	Acetic acid, fluoro-, sodium salt	P033 506-77-4 Cyanogen chloride
P002	591-08-2	1-Acetyl-2-thiourea	P033 506-77-4 Cyanogen chloride (CN)Cl
P003	107-02-8	Acrolein	P034 131-89-5 2-Cyclohexyl-4,6-dinitrophenol
P070	116-06-3	Aldicarb	P016 542-88-1 Dichloromethyl ether
P203	1646-88-4	Aldicarb sulfone.	P036 696-28-6 Dichlorophenylarsine
P004	309-00-2	Aldrin	P037 60-57-1 Dieldrin
P005	107-18-6	Allyl alcohol	P038 692-42-2 Diethylarsine
P006	20859-73-8	Aluminum phosphide (R,T)	P041 311-45-5 Diethyl-p-nitrophenyl phosphate
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol	P040 297-97-2 0,0-Diethyl 0-pyrazinyl phosphorothioate
P008	504-24-5	4-Aminopyridine	P043 55-91-4 Diisopropylfluorophosphate (DFP)
P009	131-74-8	Ammonium picrate (R)	P004 309-00-2 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-
P119	7803-55-6	Ammonium vanadate	P060 465-73-6 1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4beta, 5alpha, 8alpha, 8beta)-
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium	P037 60-57-1 2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-
P010	7778-39-4	Arsenic acid H3 AsO4	P051 (1)72-20-8 2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-
P012	1327-53-3	Arsenic oxide As2 O3	P044 60-51-5 Dimethoate
P011	1303-28-2	Arsenic oxide As2 O5	P046 122-09-8 alpha, alpha-Dimethylphenethylamine
P011	1303-28-2	Arsenic pentoxide	P191 644-64-4 Dimetilan.
P012	1327-53-3	Arsenic trioxide	P047 (1)534-52-1 4,6-Dinitro-o-cresol, and salts
P038	692-42-2	Arsine, diethyl-	P048 51-28-5 2,4-Dinitrophenol
P036	696-28-6	Arsonous dichloride, phenyl-	P020 88-85-7 Dinoseb
P054	151-56-4	Aziridine	P085 152-16-9 Diphosphoramidate, octamethyl-
P067	75-55-8	Aziridine, 2-methyl-	P111 107-49-3 Diphosphoric acid, tetraethyl ester
P013	542-62-1	Barium cyanide	P039 298-04-4 Disulfoton
P024	106-47-8	Benzenamine, 4-chloro-	P049 541-53-7 Dithiobiuret
P077	100-01-6	Benzenamine, 4-nitro-	P185 26419-73-8 1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, 0- ((methylamino)-carbonyl)oxime.
P028	100-44-7	Benzene, (chloromethyl)-	P050 115-29-7 Endosulfan
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	P088 145-73-3 Endothall
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-	P051 72-20-8 Endrin
P014	108-98-5	Benzenethiol	P051 72-20-8 Endrin, and metabolites
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.	P042 51-43-4 Epinephrine
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-ylmethylcarbamate ester (1:1).	P031 460-19-5 Ethanedinitrile
P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%	P194 23135-22-0 Ethanimidithioic acid, 2-(dimethylamino)-N-(((methylamino) carbonyl)oxy)-2-oxo-, methyl ester.
P028	100-44-7	Benzyl chloride	P066 16752-77-5 Ethanimidithioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester
P015	7440-41-7	Beryllium powder	P101 107-12-0 Ethyl cyanide
P017	598-31-2	Bromoacetone	P054 151-56-4 Ethyleneimine
P018	357-57-3	Brucine	P097 52-85-7 Famphur
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-(methylamino)carbonyl oxime	P056 7782-41-4 Fluorine
P021	592-01-8	Calcium cyanide	P057 640-19-7 Fluoroacetamide
P021	592-01-8	Calcium cyanide Ca(CN)2	P058 62-74-8 Fluoroacetic acid, sodium salt
P189	55285-14-8	Carbamic acid, ((diethylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester.	P198 23422-53-9 Formetanate hydrochloride.
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H-pyrazol-3-yl ester.	P197 17702-57-7 Formparanate.
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester.	P065 628-86-4 Fulminic acid, mercury(2+) salt (R,T)
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester.	P059 76-44-8 Heptachlor
P127	1563-66-2	Carbofuran.	P062 757-58-4 Hexaethyl tetraphosphate
P022	75-15-0	Carbon disulfide	P116 79-19-6 Hydrazinecarbothioamide
P095	75-44-5	Carbonic dichloride	P068 60-34-4 Hydrazine, methyl-
P189	55285-14-8	Carbosulfan.	P063 74-90-8 Hydrocyanic acid
P023	107-20-0	Chloroacetaldehyde	P063 74-90-8 Hydrogen cyanide
P024	106-47-8	p-Chloroaniline	P096 7803-51-2 Hydrogen phosphide
P026	5344-82-1	1-(o-Chlorophenyl)thiourea	P060 465-73-6 Isodrin
P027	542-76-7	3-Chloropropionitrile	P192 119-38-0 Isolan.
P029	544-92-3	Copper cyanide	P202 64-00-6 3-Isopropylphenyl N-methylcarbamate.
P029	544-92-3	Copper cyanide Cu(CN)	P007 2763-96-4 3(2H)-Isoxazolone, 5-(aminomethyl)-
			P196 15339-36-3 Manganese, bis(dimethylcarbamodithioato-S,S')-, Manganese dimethyldithiocarbamate.

P112	509-14-8	Methane, tetranitro- (R)	P201	2631-37-0	Promecarb
P118	75-70-7	Methanethiol, trichloro-	P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, 0-((methylamino)carbonyl)oxime
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-((methylamino)-carbonyl)oxyphenyl)-, monohydrochloride.	P203	1646-88-4	Propanal, 2-methyl-2-(methylsulfonyl)-, 0-((methylamino)carbonyl)oxime.
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-((methylamino)carbonyl)oxyphenyl)-	P101	107-12-0	Propanenitrile
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10- hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	P027	542-76-7	Propanenitrile, 3-chloro-
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro- 3a,4,7,7a-tetrahydro-	P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-1,2,3-Propanetriol, trinitrate (R)
P199	2032-65-7	Methiocarb.	P017	598-31-2	2-Propanone, 1-bromo-
P066	16752-77-5	Methomyl	P102	107-19-7	Propargyl alcohol
P068	60-34-4	Methyl hydrazine	P003	107-02-8	2-Propenal
P064	624-83-9	Methyl isocyanate	P005	107-18-6	2-Propen-1-ol
P069	75-86-5	2-Methylacetonitrile	P067	75-55-8	1,2-Propylenimine
P071	298-00-0	Methyl parathion	P102	107-19-7	2-Propyn-1-ol
P190	1129-41-5	Metolcarb.	P008	504-24-5	4-Pyridinamine
P128	315-8-4	Mexacarbate.	P075	(1)54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, and salts
P072	86-88-4	alpha-Naphthylthiourea	P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
P073	13463-39-3	Nickel carbonyl	P114	12039-52-0	Selenious acid, dithallium(1+) salt
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-	P103	630-10-4	Selenourea
P074	557-19-7	Nickel cyanide	P104	506-64-9	Silver cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2	P104	506-64-9	Silver cyanide Ag(CN)
P075	(1)54-11-5	Nicotine, and salts	P105	26628-22-8	Sodium azide
P076	10102-43-9	Nitric oxide	P106	143-33-9	Sodium cyanide
P077	100-01-6	p-Nitroaniline	P106	143-33-9	Sodium cyanide Na(CN)
P078	10102-44-0	Nitrogen dioxide	P108	(1)57-24-9	Strychnidin-10-one, and salts
P076	10102-43-9	Nitrogen oxide NO	P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P078	10102-44-0	Nitrogen oxide NO2	P108	(1)57-24-9	Strychnine, and salts
P081	55-63-0	Nitroglycerine (R)	P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P082	62-75-9	N-Nitrosodimethylamine	P109	3689-24-5	Tetraethyl dithiopyrophosphate
P084	4549-40-0	N-Nitrosomethylvinylamine	P110	78-00-2	Tetraethyl lead
P085	152-16-9	Octamethylpyrophosphoramidate	P111	107-49-3	Tetraethyl pyrophosphate
P087	20816-12-0	Osmium oxide OsO4, (T-4)-	P112	509-14-8	Tetranitromethane (R)
P087	20816-12-0	Osmium tetroxide	P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P088	145-73-3	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid	P113	1314-32-5	Thallic oxide
P194	23135-22-0	Oxamyl.	P113	1314-32-5	Thallium oxide Tl2 O3
P089	56-38-2	Parathion	P114	12039-52-0	Thallium(I) selenite
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-	P115	7446-18-6	Thallium(I) sulfate
P048	51-28-5	Phenol, 2,4-dinitro-	P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts	P045	39196-18-4	Thiofanox
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	P049	541-53-7	Thioimidodicarbonic diamide ((H2 N)C(S)2 NH
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)	P014	108-98-5	Thiophenol
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).	P116	79-19-6	Thiosemicarbazide
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate.	P072	86-88-4	Thiourea, 1-naphthalenyl-
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate.	P093	103-85-5	Thiourea, phenyl-
P092	62-38-4	Phenylmercury acetate	P185	26419-73-8	Tirpate.
P093	103-85-5	Phenylthiourea	P123	8001-35-2	Toxaphene
P094	298-02-2	Phorate	P118	75-70-7	Trichloromethanethiol
P095	75-44-5	Phosgene	P119	7803-55-6	Vanadic acid, ammonium salt
P096	7803-51-2	Phosphine	P120	1314-62-1	Vanadium oxide V2 O5
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester	P120	1314-62-1	Vanadium pentoxide
P039	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-(2- (ethylthio)ethyl) ester	P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P094	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P044	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-(2- (methylamino)-2-oxoethyl) ester	P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-
P043	55-91-4	Phosphorofluoric acid, bis(1-methylethyl) ester	P121	557-21-1	Zinc cyanide
P089	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	P121	557-21-1	Zinc cyanide Zn(CN)2
P040	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P097	52-85-7	Phosphorothioic acid, 0-(4-((dimethylamino)sulfonyl)phenyl) 0,0-dimethyl ester	P205	137-30-4	Ziram.
P071	298-00-0	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%
P204	57-47-6	Physostigmine.	P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P188	57-64-7	Physostigmine salicylate.	P002	591-08-2	Acetamide, -(aminothioxomethyl)-
P110	78-00-2	Plumbane, tetraethyl-	P002	591-08-2	1-Acetyl-2-thiourea
P098	151-50-8	Potassium cyanide	P003	107-02-8	Acrolein
P098	151-50-8	Potassium cyanide K(CN)	P003	107-02-8	2-Propenal
P099	506-61-6	Potassium silver cyanide	P004	309-00-2	Aldrin
			P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4beta, 5alpha, 8alpha,8beta)-
			P005	107-18-6	Allyl alcohol
			P005	107-18-6	2-Propen-1-ol
			P006	20859-73-8	Aluminum phosphide (R,T)
			P007	2763-96-4	5-(Aminomethyl)-3-isoxazolo1

P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-			N)C(S))2 NH
P008	504-24-5	4-Aminopyridine	P050	115-29-7	Endosulfan
P008	504-24-5	4-Pyridinamine	P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin,
P009	131-74-8	Ammonium picrate (R)			6,7,8,9,10,10-hexachloro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)			1,5,5a,6,9,9a-hexahydro-, 3-oxide
P010	7778-39-4	Arsenic acid H3 AsO4	P051	(1)72-20-8	2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta,2beta, 3alpha, 6alpha, 6beta,7beta, 7aalpha)-, and metabolites
P011	1303-28-2	Arsenic oxide As2 O5			Endrin
P011	1303-28-2	Arsenic pentoxide	P051	72-20-8	Endrin, and metabolites
P012	1327-53-3	Arsenic oxide As2 O3			Aziridine
P012	1327-53-3	Arsenic trioxide			Ethyleneimine
P013	542-62-1	Barium cyanide	P056	7782-41-4	Fluorine
P014	108-98-5	Benzenethiol	P057	640-19-7	Acetamide, 2-fluoro-
P014	108-98-5	Thiophenol	P057	640-19-7	Fluoroacetamide
P015	7440-41-7	Beryllium powder	P058	62-74-8	Acetic acid, fluoro-, sodium salt
P016	542-88-1	Dichloromethyl ether	P058	62-74-8	Fluoroacetic acid, sodium salt
P016	542-88-1	Methane, oxybis(chloro-	P059	76-44-8	Heptachlor
P017	598-31-2	Bromoacetone	P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4beta,5beta, 8beta,8beta)-
P017	598-31-2	2-Propanone, 1-bromo-			Isodrin
P018	357-57-3	Brucine	P060	465-73-6	Hexaethyl tetraphosphate
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-			Tetraphosphoric acid, hexaethyl ester
P020	88-85-7	Dinoseb	P062	465-73-6	Hydrocyanic acid
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	P062	757-58-4	Hydrogen cyanide
			P062	757-58-4	Methane, isocyanato-
P021	592-01-8	Calcium cyanide	P063	74-90-8	Methyl isocyanate
P021	592-01-8	Calcium cyanide Ca(CN)2	P063	74-90-8	Fulminic acid, mercury(2+) salt (R,T)
P022	75-15-0	Carbon disulfide	P064	624-83-9	Mercury fulminate (R,T)
P023	107-20-0	Acetaldehyde, chloro-	P065	628-86-4	Ethanimidothioic acid, N-((methylamino)carbonyl)oxy-, methyl ester
P023	107-20-0	Chloroacetaldehyde	P066	16752-77-5	Methomyl
P024	106-47-8	Benzenamine, 4-chloro-			Aziridine, 2-methyl-
P024	106-47-8	p-Chloroaniline			1,2-Propylenimine
P026	5344-82-1	1-(o-Chlorophenyl)thiourea	P067	75-55-8	Hydrazine, methyl-
P026	5344-82-1	Thiourea, (2-chlorophenyl)-	P067	75-55-8	Methyl hydrazine
P027	542-76-7	3-Chloropropionitrile	P068	60-34-4	2-Methylactonitrile
P027	542-76-7	Propanenitrile, 3-chloro-	P068	60-34-4	Propanenitrile, 2-hydroxy-2-methyl-
P028	100-44-7	Benzene, (chloromethyl)-	P069	75-86-5	Aldicarb
P028	100-44-7	Benzyl chloride	P069	75-86-5	Propanal, 2-methyl-2-(methylthio)-, 0-((methylamino)carbonyl)oxime
P029	544-92-3	Copper cyanide	P070	116-06-3	Methyl parathion
P029	544-92-3	Copper cyanide Cu(CN)	P070	116-06-3	Phosphorothioic acid, 0,0,-dimethyl 0-(4-nitrophenyl) ester
P030		Cyanides (soluble cyanide salts), not otherwise specified	P071	298-00-0	alpha-Naphthylthiourea
P031	460-19-5	Cyanogen	P071	298-00-0	Thiourea, 1-naphthalenyl-
P031	460-19-5	Ethanedinitrile	P072	86-88-4	Nickel carbonyl
P033	506-77-4	Cyanogen chloride	P072	86-88-4	Nickel carbonyl Ni(CO)4, (T-4)-
P033	506-77-4	Cyanogen chloride (CN)Cl	P073	13463-39-3	Nickel cyanide
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol	P073	13463-39-3	Nickel cyanide Ni(CN)2
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-	P074	557-19-7	Nicotine, and salts
P036	696-28-6	Arsonous dichloride, phenyl-	P074	557-19-7	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, S)-, and salts
P036	696-28-6	Dichlorophenylarsine	P075	(1)54-11-5	Nitric oxide
P037	60-57-1	Dieldrin	P075	(1)54-11-5	Nitrogen oxide N0
P037	60-57-1	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta,6alpha,7beta, 7aalpha)-	P076	10102-43-9	Benzenamine, 4-nitro-
			P076	10102-43-9	p-Nitroaniline
P038	692-42-2	Arsine, diethyl-	P077	100-01-6	Nitrogen dioxide
P038	692-42-2	Diethylarsine	P077	100-01-6	Nitrogen oxide N02
P039	298-04-4	Disulfoton	P078	10102-44-0	Nitroglycerine (R)
P039	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	P078	10102-44-0	1,2,3-Propanetriol, trinitrate (R)
P040	297-97-2	0,0-Diethyl 0-pyrazinyl phosphorothioate	P081	55-63-0	Methanamine, -methyl-N-nitroso-
P040	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	P081	55-63-0	N-Nitrosodimethylamine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate	P082	62-75-9	N-Nitrosomethylvinylamine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester	P082	62-75-9	Vinylamine, -methyl-N-nitroso-
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	P084	4549-40-0	Diphosphoramidate, octamethyl-
P042	51-43-4	Epinephrine	P084	4549-40-0	Octamethylpyrophosphoramidate
P043	55-91-4	Diisopropylfluorophosphate (DFP)	P085	152-16-9	Osmium oxide OsO4, (T-4)-
P043	55-91-4	Phosphorofluoric acid, bis(1-methylethyl) ester	P085	152-16-9	Osmium tetroxide
P044	60-51-5	Dimethoate	P087	20816-12-0	Endothall
P044	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-(2-(methyl amino)-2-oxoethyl) ester	P087	20816-12-0	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-((methylamino)carbonyl) oxime	P088	145-73-3	Parathion
P045	39196-18-4	Thiofanox	P088	145-73-3	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester
P046	122-09-8	Benzenethanamine, alpha,alpha-dimethyl-	P089	56-38-2	Mercury, (acetato-0)phenyl-
P046	122-09-8	alpha,alpha-Dimethylphenethylamine	P089	56-38-2	Phenylmercury acetate
P047	(1)534-52-1	4,6-Dinitro-o-cresol, and salts			Phenylthiourea
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts	P092	62-38-4	Thiourea, phenyl-
P048	51-28-5	2,4-Dinitrophenol	P092	62-38-4	Phorate
P048	51-28-5	Phenol, 2,4-dinitro-	P093	103-85-5	
P049	541-53-7	Dithiobiuret	P093	103-85-5	
P049	541-53-7	Thioimidodicarbonic diamide ((H2	P094	298-02-2	



P094	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester
P095	75-44-5	Carbonic dichloride
P095	75-44-5	Phosgene
P096	7803-51-2	Hydrogen phosphide
P096	7803-51-2	Phosphine
P097	52-85-7	Famphur
P097	52-85-7	Phosphorothioic acid, 0-(4-((dimethylamino)sulfonyl)phenyl) 0,0-dimethyl ester
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P099	506-61-6	Potassium silver cyanide
P101	107-12-0	Ethyl cyanide
P101	107-12-0	Propanenitrile
P102	107-19-7	Propargyl alcohol
P102	107-19-7	2-Propyn-1-ol
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	(1)157-24-9	Strychnidin-10-one, and salts
P108	(1)157-24-9	Strychnine, and salts
P109	3689-24-5	Tetraethylthiopyrophosphate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P110	78-00-2	Plumbane, tetraethyl-
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Methane, tetranitro-(R)
P112	509-14-8	Tetranitromethane (R)
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P114	12039-52-0	Tetraethylthiopyrophosphate
P115	7446-18-6	Thiodiphosphoric acid, tetraethyl ester
P115	7446-18-6	Plumbane, tetraethyl-
P116	79-19-6	Tetraethyl lead
P116	79-19-6	Thiosemicarbazide
P118	75-70-7	Methanethiol, trichloro-
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Ammonium vanadate
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2O5
P120	1314-62-1	Vanadium pentoxide
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P123	8001-35-2	Toxaphene
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P127	1563-66-2	Carbofuran
P128	315-8-4	Mexacarbate
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, 0-((methylamino)-carbonyl)oxime.
P185	26419-73-8	Tirpate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-yl methylcarbamate ester (1:1)
P188	57-64-7	Physostigmine salicylate
P189	55285-14-8	Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285-14-8	Carbosulfan
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N-((methylamino)

P194	23135-22-0	carbonyl)oxy)-2-oxo-, methyl ester OxamyI
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-((methylamino)carbonyl)oxy)phenyl)-formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-(3-((methylamino)-carbonyl)oxy)phenyl)-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methylsulfonyl)-, 0-((methylamino)carbonyl)oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P205	137-30-4	Ziram
P999		Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

Note (1) CAS Number given for parent compound only.

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Subsections R315-261-33(a) through (d), are identified as toxic wastes (T), unless otherwise designated. For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE

Hazardous waste No.	Chemical abstracts No.	Substance
U394	30558-43-1	A2213.
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	(1)94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U112	141-78-6	Acetic acid ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
see F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-

		((aminocarbonyl)oxy methyl)-			less
		1,1a,2,8,8a,8b-hexahydro-8a-	U022	50-32-8	Benzo(a)pyrene
		methoxy-5-methyl-, (1aS-(1aalpha,	U197	106-51-4	p-Benzoquinone
		8beta, 8aalpha,8balpha))-	U023	98-07-7	Benzotrithloride (C,R,T)
U280	101-27-9	Barban.	U085	1464-53-5	2,2'-Bioxirane
U278	22781-23-3	Bendiocarb.	U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine
U364	22961-82-6	Bendiocarb phenol.	U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-
U271	17804-35-2	Benomyl.			dichloro-
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-	U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-
		methyl-			dimethoxy-
U016	225-51-4	Benz(c)acridine	U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-
U017	98-87-3	Benzal chloride			dimethyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-	U225	75-25-2	Bromoform
		dimethyl-2-propenyl)-	U030	101-55-3	4-Bromophenyl phenyl ether
U018	56-55-3	Benz(a)anthracene	U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-	U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U012	62-53-3	Benzenamine (I,T)	U031	71-36-3	1-Butanol (I)
U014	492-80-8	Benzenamine, 4,4'-	U159	78-93-3	2-Butanone (I,T)
		carbonimidoylbis(N,N-dimethyl-	U160	1338-23-4	2-Butanone, peroxide (R,T)
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-,	U053	4170-30-3	2-Butenal
		hydrochloride	U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U093	60-11-7	Benzenamine, N,N-dimethyl-4-	U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-
		(phenylazo)-			dihydroxy- 2-(1-methoxyethyl)-3-
U328	95-53-4	Benzenamine, 2-methyl-			methyl-1-oxobutoxy)methyl)- 2,3,5,7a-
U353	106-49-0	Benzenamine, 4-methyl-			tetrahydro-1H-pyrrolizin-1-yl ester,
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-			(1S-(1alpha(Z),7(2S*,3R*),7aalpha))-
		chloro-	U031	71-36-3	n-Butyl alcohol (I)
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride	U136	75-60-5	Cacodylic acid
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-	U032	13765-19-0	Calcium chromate
U019	71-43-2	Benzene (I,T)	U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl,
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-			methyl ester.
		chlorophenyl)-alpha-hydroxy-, ethyl	U271	17804-35-2	Carbamic acid, (1-
		ester			((butylamino)carbonyl)-
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-			1H-benzimidazol-2-yl)-, methyl ester.
U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-	U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-
		chloroethyl)amino)-			chloro-2-butynyl ester.
U037	108-90-7	Benzene, chloro-	U238	51-79-6	Carbamic acid, ethyl ester
U221	25376-45-8	Benzenediamine, ar-methyl-	U178	615-53-2	Carbamic acid, methylnitroso-, ethyl
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-			ester
		ethylhexyl) ester	U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl			ester.
		ester	U409	23564-05-8	Carbamic acid, (1,2-phenylenebis
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl			(iminocarbonothioyl)bis-, dimethyl
		ester			ester.
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl	U097	79-44-7	Carbamic chloride, dimethyl-
		ester	U389	2303-17-5	Carbamothioic acid, bis(1-
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl			methylethyl)-, S-
		ester			(2,3,3-trichloro-2-propenyl) ester.
U070	95-50-1	Benzene, 1,2-dichloro-	U387	52888-80-9	Carbamothioic acid, dipropyl-, S-
U071	541-73-1	Benzene, 1,3-dichloro-			(phenylmethyl) ester.
U072	106-46-7	Benzene, 1,4-dichloro-	U114	(1)111-54-6	Carbamodithioic acid, 1,2-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)			ethanediybis-,
		bis(4-chloro-			salts and esters
U017	98-87-3	Benzene, (dichloromethyl)-	U062	2303-16-4	Carbamothioic acid, bis(1-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)			methylethyl)-, S- (2,3-dichloro-2-
U239	1330-20-7	Benzene, dimethyl- (I)			propenyl) ester
U201	108-46-3	1,3-Benzenediol	U279	63-25-2	Carbaryl.
U127	118-74-1	Benzene, hexachloro-	U372	10605-21-7	Carbendazim.
U056	110-82-7	Benzene, hexahydro- (I)	U367	1563-38-8	Carbofuran phenol.
U220	108-88-3	Benzene, methyl-	U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-	U033	353-50-4	Carbonic difluoride
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-	U156	79-22-1	Carbonochloridic acid, methyl ester
U055	98-82-8	Benzene, (1-methylethyl)- (I)			(I,T)
U169	98-95-3	Benzene, nitro-	U033	353-50-4	Carbon oxyfluoride (R,T)
U183	608-93-5	Benzene, pentachloro-	U211	56-23-5	Carbon tetrachloride
U185	82-68-8	Benzene, pentachloronitro-	U034	75-87-6	Chloral
U020	98-09-9	Benzenesulfonic acid chloride (C,R)	U035	305-03-3	Chlorambucil
U020	98-09-9	Benzenesulfonyl chloride (C,R)	U036	57-74-9	Chlordane, alpha and gamma isomers
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-	U026	494-03-1	Chlornaphazin
U061	50-29-3	Benzene, 1,1'-(2,2,2-	U037	108-90-7	Chlorobenzene
		trichloroethylidene) bis(4-chloro-	U038	510-15-6	Chlorobenzilate
U247	72-43-5	Benzene, 1,1'-(2,2,2-	U039	59-50-7	p-Chloro-m-cresol
		trichloroethylidene)	U042	110-75-8	2-Chloroethyl vinyl ether
		bis(4- methoxy-	U044	67-66-3	Chloroform
U023	98-07-7	Benzene, (trichloromethyl)-	U046	107-30-2	Chloromethyl methyl ether
U234	99-35-4	Benzene, 1,3,5-trinitro-	U047	91-58-7	beta-Chloronaphthalene
U021	92-87-5	Benizidine	U048	95-57-8	o-Chlorophenol
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
		methyl carbamate.	U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	U050	218-01-9	Chrysene
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	U051		Creosote
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	U052	1319-77-3	Cresol (Cresylic acid)
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-	U053	4170-30-3	Crotonaldehyde
		dimethyl-	U055	98-82-8	Cumene (I)
		1,3-Benzodioxole, 5-propyl-	U246	506-68-3	Cyanogen bromide (CN)Br
U090	94-58-6	Benzo(rst)pentaphene	U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U064	189-55-9		U056	110-82-7	Cyclohexane (I)
U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-	U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,
		oxo-1-phenyl-butyl)-, and salts, when			(1alpha,2alpha,3beta,4alpha, 5alpha,
		present at concentrations of 0.3% or			

U057	108-94-1	6beta)- Cyclohexanone (I)	U078	75-35-4	Ethene, 1,1-dichloro-
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U058	50-18-0	Cyclophosphamide	U210	127-18-4	Ethene, tetrachloro-
U240	(1)94-75-7	2,4-D, salts and esters	U228	79-01-6	Ethene, trichloro-
U059	20830-81-3	Daunomycin	U112	141-78-6	Ethyl acetate (I)
U060	72-54-8	DDD	U113	140-88-5	Ethyl acrylate (I)
U061	50-29-3	DDT	U238	51-79-6	Ethyl carbamate (urethane)
U062	2303-16-4	Diallate	U117	60-29-7	Ethyl ether (I)
U063	53-70-3	Dibenz(a,h)anthracene	U114	(1)111-54-6	Ethylenebis(dithiocarbamic acid, salts and esters)
U064	189-55-9	Dibenzo(a,i)pyrene	U067	106-93-4	Ethylene dibromide
U066	96-12-8	1,2-Dibromo-3-chloropropane	U077	107-06-2	Ethylene dichloride
U069	84-74-2	Dibutyl phthalate	U359	110-80-5	Ethylene glycol monoethyl ether
U070	95-50-1	o-Dichlorobenzene	U115	75-21-8	Ethylene oxide (I,T)
U071	541-73-1	m-Dichlorobenzene	U116	96-45-7	Ethylenethiourea
U072	106-46-7	p-Dichlorobenzene	U076	75-34-3	Ethylidene dichloride
U073	91-94-1	3,3'-Dichlorobenzidine	U118	97-63-2	Ethyl methacrylate
U074	764-41-0	1,4-Dichloro-2-butene (I,T)	U119	62-50-0	Ethyl methanesulfonate
U075	75-71-8	Dichlorodifluoromethane	U120	206-44-0	Fluoranthene
U078	75-35-4	1,1-Dichloroethylene	U122	50-00-0	Formaldehyde
U079	156-60-5	1,2-Dichloroethylene	U123	64-18-6	Formic acid (C,T)
U025	111-44-4	Dichloroethyl ether	U124	110-00-9	Furan (I)
U027	108-60-1	Dichloroisopropyl ether	U125	98-01-1	2-Furancarboxaldehyde (I)
U024	111-91-1	Dichloromethoxy ethane	U147	108-31-6	2,5-Furandione
U081	120-83-2	2,4-Dichlorophenol	U213	109-99-9	Furan, tetrahydro-(I)
U082	87-65-0	2,6-Dichlorophenol	U125	98-01-1	Furfural (I)
U084	542-75-6	1,3-Dichloropropene	U124	110-00-9	Furfuran (I)
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)	U206	18883-66-4	18883-66-4
U108	123-91-1	1,4-Diethyleneoxide	U206	18883-66-4	18883-66-4
U028	117-81-7	Diethylhexyl phthalate	U126	765-34-4	765-34-4
U395	5952-26-1	Diethylene glycol, dicarbamate.	U163	70-25-7	70-25-7
U086	1615-80-1	N,N'-Diethylhydrazine	U127	118-74-1	118-74-1
U087	3288-58-2	0,0-Diethyl S-methyl dithiophosphate	U128	87-68-3	87-68-3
U088	84-66-2	Diethyl phthalate	U130	77-47-4	77-47-4
U089	56-53-1	Diethylstilbestrol	U131	67-72-1	67-72-1
U090	94-58-6	Dihydrosafrole	U132	70-30-4	70-30-4
U091	119-90-4	3,3'-Dimethoxybenzidine	U243	1888-71-7	1888-71-7
U092	124-40-3	Dimethylamine (I)	U133	302-01-2	302-01-2
U093	60-11-7	p-Dimethylaminoazobenzene	U086	1615-80-1	1615-80-1
U094	57-97-6	7,12-Dimethylbenz(a)anthracene	U098	57-14-7	57-14-7
U095	119-93-7	3,3'-Dimethylbenzidine	U099	540-73-8	540-73-8
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)	U109	122-66-7	122-66-7
U097	79-44-7	Dimethylcarbonyl chloride	U134	7664-39-3	7664-39-3
U098	57-14-7	1,1-Dimethylhydrazine	U134	7664-39-3	7664-39-3
U099	540-73-8	1,2-Dimethylhydrazine	U135	7783-06-4	7783-06-4
U101	105-67-9	2,4-Dimethylphenol	U135	7783-06-4	7783-06-4
U102	131-11-3	Dimethyl phthalate	U096	80-15-9	80-15-9
U103	77-78-1	Dimethyl sulfate	U116	96-45-7	96-45-7
U105	121-14-2	2,4-Dinitrotoluene	U137	193-39-5	193-39-5
U106	606-20-2	2,6-Dinitrotoluene	U190	85-44-9	85-44-9
U107	117-84-0	Di-n-octyl phthalate	U140	78-83-1	78-83-1
U108	123-91-1	1,4-Dioxane	U141	120-58-1	120-58-1
U109	122-66-7	1,2-Diphenylhydrazine	U142	143-50-0	143-50-0
U110	142-84-7	Dipropylamine (I)	U143	303-34-4	303-34-4
U111	621-64-7	Di-n-propylnitrosamine	U144	301-04-2	301-04-2
U041	106-89-8	Epichlorohydrin	U146	1335-32-6	1335-32-6
U001	75-07-0	Ethanal (I)	U145	7446-27-7	7446-27-7
U404	121-44-8	Ethanamine, N,N-diethyl-	U146	1335-32-6	1335-32-6
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-	U129	58-89-9	58-89-9
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-(2-pyridinyl-N'-(2-thienylmethyl)-	U163	70-25-7	70-25-7
U067	106-93-4	Ethane, 1,2-dibromo-	U147	108-31-6	108-31-6
U076	75-34-3	Ethane, 1,1-dichloro-	U148	123-33-1	123-33-1
U077	107-06-2	Ethane, 1,2-dichloro-	U149	109-77-3	109-77-3
U131	67-72-1	Ethane, hexachloro-	U150	148-82-3	148-82-3
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-	U151	7439-97-6	7439-97-6
U117	60-29-7	Ethane, 1,1'-oxybis-(I)	U152	126-98-7	126-98-7
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-	U092	124-40-3	124-40-3
U184	76-01-7	Ethane, pentachloro-	U029	74-83-9	74-83-9
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-	U045	74-87-3	74-87-3
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-	U046	107-30-2	107-30-2
U218	62-55-5	Ethanethioamide	U068	74-95-3	74-95-3
U226	71-55-6	Ethane, 1,1,1-trichloro-	U080	75-09-2	75-09-2
U227	79-00-5	Ethane, 1,1,2-trichloro-	U075	75-71-8	75-71-8
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis(methylimino)carbonyloxy))bis-, dimethyl ester	U138	74-88-4	74-88-4
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.	U119	62-50-0	62-50-0
U359	110-80-5	Ethanol, 2-ethoxy-	U211	56-23-5	56-23-5
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-	U153	74-93-1	74-93-1
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.	U225	75-25-2	75-25-2
U004	98-86-2	Ethanone, 1-phenyl-	U044	67-66-3	67-66-3
U043	75-01-4	Ethene, chloro-	U121	75-69-4	75-69-4
U042	110-75-8	Ethene, (2-chloroethoxy)-	U036	57-74-9	57-74-9
			U154	67-56-1	67-56-1

U155	91-80-5	Methapyrilene	U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-	U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U247	72-43-5	Methoxychlor	U087	3288-58-2	Phosphorodithioic acid, O,0-diethyl S-methyl ester
U154	67-56-1	Methyl alcohol (I)	U189	1314-80-3	Phosphorus sulfide (R)
U029	74-83-9	Methyl bromide	U190	85-44-9	Phthalic anhydride
U186	504-60-9	1-Methylbutadiene (I)	U191	109-06-8	2-Picoline
U045	74-87-3	Methyl chloride (I,T)	U179	100-75-4	Piperidine, 1-nitroso-
U156	79-22-1	Methyl chlorocarbonate (I,T)	U192	23950-58-5	Pronamide
U226	71-55-6	Methyl chloroform	U194	107-10-8	1-Propanamine (I,T)
U157	56-49-5	3-Methylcholanthrene	U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)	U110	142-84-7	1-Propanamine, N-propyl- (I)
U068	74-95-3	Methylene bromide	U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U080	75-09-2	Methylene chloride	U083	78-87-5	Propane, 1,2-dichloro-
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)	U149	109-77-3	Propanedinitrile
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)	U171	79-46-9	Propane, 2-nitro- (I,T)
U138	74-88-4	Methyl iodide	U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-
U161	108-10-1	Methyl isobutyl ketone (I)	U193	1120-71-4	1,3-Propane sultone
U162	80-62-6	Methyl methacrylate (I,T)	See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U161	108-10-1	4-Methyl-2-pentanone (I)	U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U164	56-04-2	Methylthiouracil	U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U010	50-07-7	Mitomycin C	U002	67-64-1	2-Propanone (I)
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	U007	79-06-1	2-Propenamide
U167	134-32-7	1-Naphthalenamine	U084	542-75-6	1-Propene, 1,3-dichloro-
U168	91-59-8	2-Naphthalenamine	U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-	U009	107-13-1	2-Propenenitrile
U165	91-20-3	Naphthalene	U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U047	91-58-7	Naphthalene, 2-chloro-	U008	79-10-7	2-Propenoic acid (I)
U166	130-15-4	1,4-Naphthalenedione	U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt	U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U279	63-25-2	1-Naphthalenol, methylcarbamate.	U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U166	130-15-4	1,4-Naphthoquinone	U373	122-42-9	Propam.
U167	134-32-7	alpha-Naphthylamine	U411	114-26-1	Propoxur.
U168	91-59-8	beta-Naphthylamine	U387	52888-80-9	Prosulfocarb.
U217	10102-45-1	Nitric acid, thallium(I) salt	U194	107-10-8	n-Propylamine (I,T)
U169	98-95-3	Nitrobenzene (I,T)	U083	78-87-5	Propylene dichloride
U170	100-02-7	p-Nitrophenol	U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U171	79-46-9	2-Nitropropane (I,T)	U196	110-86-1	Pyridine
U172	924-16-3	N-Nitrosodi-n-butylamine	U191	109-06-8	Pyridine, 2-methyl-
U173	1116-54-7	N-Nitrosodiethanolamine	U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U174	55-18-5	N-Nitrosodiethylamine	U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U176	759-73-9	N-Nitroso-N-ethylurea	U180	930-55-2	Pyrrolidine, 1-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea	U200	50-55-5	Reserpine
U178	615-53-2	N-Nitroso-N-methylurethane	U201	108-46-3	Resorcinol
U179	100-75-4	N-Nitrosopiperidine	U203	94-59-7	Safrole
U180	930-55-2	N-Nitrosopyrrolidine	U204	7783-00-8	Selenious acid
U181	99-55-8	5-Nitro-o-toluidine	U204	7783-00-8	Selenium dioxide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide	U205	7488-56-4	Selenium sulfide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide Oxirane (I,T)	U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U115	75-21-8	Oxiranecarboxaldehyde	U015	115-02-6	L-Serine, diazoacetate (ester)
U126	765-34-4	Oxirane, (chloromethyl)-	See F027	93-72-1	Silvex (2,4,5-TP)
U041	106-89-8	Paraldehyde	U206	18883-66-4	Streptozotocin
U182	123-63-7	Pentachlorobenzene	U103	77-78-1	Sulfuric acid, dimethyl ester
U183	608-93-5	Pentachloroethane	U189	1314-80-3	Sulfur phosphide (R)
U184	76-01-7	Pentachloronitrobenzene (PCNB)	See F027	93-76-5	2,4,5-T
U185	82-68-8	Pentachlorophenol	U207	95-94-3	1,2,4,5-Tetrachlorobenzene
See F027	87-86-5	Pentachlorophenol	U208	630-20-6	1,1,1,2-Tetrachloroethane
U161	108-10-1	Pentanol, 4-methyl-	U209	79-34-5	1,1,2,2-Tetrachloroethane
U186	504-60-9	1,3-Pentadiene (I)	U210	127-18-4	Tetrachloroethylene
U187	62-44-2	Phenacetin	See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U188	108-95-2	Phenol	U213	109-99-9	Tetrahydrofuran (I)
U048	95-57-8	Phenol, 2-chloro-	U214	563-68-8	Thallium(I) acetate
U039	59-50-7	Phenol, 4-chloro-3-methyl-	U215	6533-73-9	Thallium(I) carbonate
U081	120-83-2	Phenol, 2,4-dichloro-	U216	7791-12-0	Thallium(I) chloride
U082	87-65-0	Phenol, 2,6-dichloro-	U216	7791-12-0	thallium chloride TlCl
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	U217	10102-45-1	Thallium(I) nitrate
U101	105-67-9	Phenol, 2,4-dimethyl-	U218	62-55-5	Thioacetamide
U052	1319-77-3	Phenol, methyl-	U410	59669-26-0	Thiodicarb.
U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-	U153	74-93-1	Thiomethanol (I,T)
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.	U244	137-26-8	Thioperoxydicarbonic diamide ((H2N(C(S)2)2 S2, tetramethyl-
U170	100-02-7	Phenol, 4-nitro-	U409	23564-05-8	Thiophanate-methyl.
See F027	87-86-5	Phenol, pentachloro-	U219	62-56-6	Thiourea
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-	U244	137-26-8	Thiram
See F027	95-95-4	Phenol, 2,4,5-trichloro-	U220	108-88-3	Toluene
See F027	88-06-2	Phenol, 2,4,6-trichloro-	U221	25376-45-8	Toluenediamine
			U223	26471-62-5	Toluene diisocyanate (R,T)
			U328	95-53-4	o-Toluidine
			U353	106-49-0	p-Toluidine
			U222	636-21-5	p-Toluidine hydrochloride
			U389	2303-17-5	Triallate.

U011	61-82-5	1H-1,2,4-Triazol-3-amine	U032	13765-19-0	Calcium chromate
U226	71-55-6	1,1,1-Trichloroethane	U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U227	79-00-5	1,1,2-Trichloroethane	U033	353-50-4	Carbonic difluoride
U228	79-01-6	Trichloroethylene	U033	353-50-4	Carbon oxyfluoride (R,T)
U121	75-69-4	Trichloromonofluoromethane	U034	75-87-6	Acetaldehyde, trichloro-
See F027	95-95-4	2,4,5-Trichlorophenol	U034	75-87-6	Chloral
See F027	88-06-2	2,4,6-Trichlorophenol	U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-
U404	121-44-8	Triethylamine.	U035	305-03-3	Chlorambucil
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)	U036	57-74-9	Chlordane, alpha and gamma isomers
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-	U036	57-74-9	4,7-Methano-1H-indene,
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate	U036	57-74-9	1,2,4,5,6,7,8,8-octachloro-
U236	72-57-1	Trypan blue			2,3,3a,4,7,7a-hexahydro-
U237	66-75-1	Uracil shallard			Benzene, chloro-
U176	759-73-9	Urea, N-ethyl-N-nitroso-	U037	108-90-7	Chlorobenzene
U177	684-93-5	Urea, N-methyl-N-nitroso-	U037	108-90-7	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U043	75-01-4	Vinyl chloride	U038	510-15-6	Chlorobenzilate
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less	U038	510-15-6	p-Chloro-m-cresol
U239	1330-20-7	Xylene (I)	U039	59-50-7	Phenol, 4-chloro-3-methyl-
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta, 20alpha)-	U041	106-89-8	Epichlorohydrin
U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less	U041	106-89-8	Oxirane, (chloromethyl)-
U001	75-07-0	Acetaldehyde (I)	U042	110-75-8	2-Chloroethyl vinyl ether
U001	75-07-0	Ethanal (I)	U042	110-75-8	Ethene, (2-chloroethoxy)-
U002	67-64-1	Acetone (I)	U043	75-01-4	Ethene, chloro-
U002	67-64-1	2-Propanone (I)	U043	75-01-4	Vinyl chloride
U003	75-05-8	Acetonitrile (I,T)	U044	67-66-3	Chloroform
U004	98-86-2	Acetophenone	U044	67-66-3	Methane, trichloro-
U004	98-86-2	Ethanone, 1-phenyl-	U045	74-87-3	Methane, chloro- (I,T)
U005	53-96-3	Acetamide, -9H-fluoren-2-yl-	U045	74-87-3	Methyl chloride (I,T)
U005	53-96-3	2-Acetylaminofluorene	U046	107-30-2	Chloromethyl methyl ether
U006	75-36-5	Acetyl chloride (C,R,T)	U046	107-30-2	Methane, chloromethoxy-
U007	79-06-1	Acrylamide	U047	91-58-7	beta-Chloronaphthalene
U007	79-06-1	2-Propenamide	U047	91-58-7	Naphthalene, 2-chloro-
U008	79-10-7	Acrylic acid (I)	U048	95-57-8	o-Chlorophenol
U008	79-10-7	2-Propenoic acid (I)	U048	95-57-8	Phenol, 2-chloro-
U009	107-13-1	Acrylonitrile	U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U009	107-13-1	2-Propenenitrile	U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-((aminocarbonyl)oxy)methyl)-, 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS-(1aalpha, 8beta, 8aalpha, 8balpha))-	U050	218-01-9	Chrysene
U010	50-07-7	Mitomycin C	U051		Creosote
U011	61-82-5	Amitrole	U052	1319-77-3	Cresol (Cresylic acid)
U011	61-82-5	1H-1,2,4-Triazol-3-amine	U052	1319-77-3	Phenol, methyl-
U012	62-53-3	Aniline (I,T)	U053	4170-30-3	2-Butenal
U012	62-53-3	Benzenamine (I,T)	U053	4170-30-3	Crotonaldehyde
U014	492-80-8	Auramine	U055	98-82-8	Benzene, (1-methylethyl)-(I)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-Azaserine	U055	98-82-8	Cumene (I)
U015	115-02-6	L-Serine, diazoacetate (ester)	U056	110-82-7	Benzene, hexahydro-(I)
U015	115-02-6	Benz(c)acridine	U056	110-82-7	Cyclohexane (I)
U016	225-51-4	Benzal chloride	U057	108-94-1	Cyclohexanone (I)
U017	98-87-3	Benzene, (dichloromethyl)-	U058	50-18-0	Cyclophosphamide
U017	98-87-3	Benzene, (dichloromethyl)-	U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U018	56-55-3	Benz(a)anthracene	U059	20830-81-3	Daunomycin
U019	71-43-2	Benzene (I,T)	U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)	U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-DDD
U020	98-09-9	Benzenesulfonyl chloride (C,R)	U060	72-54-8	DDT
U021	92-87-5	Benzidine	U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-DDT
U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine	U061	50-29-3	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
U022	50-32-8	Benzo(a)pyrene	U062	2303-16-4	Diallate
U023	98-07-7	Benzene, (trichloromethyl)-	U062	2303-16-4	Dibenz(a,h)anthracene
U023	98-07-7	Benzotrichloride (C,R,T)	U063	53-70-3	Benzo(rst)pentaphene
U024	111-91-1	Dichloromethoxy ethane	U064	189-55-9	Dibenzo(a,i)pyrene
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-	U064	189-55-9	1,2-Dibromo-3-chloropropane
U025	111-44-4	Dichloroethyl ether	U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-	U066	96-12-8	Ethane, 1,2-dibromo-
U026	494-03-1	Chlornaphazin	U067	106-93-4	Ethylene dibromide
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-	U067	106-93-4	Methane, dibromo-
U027	108-60-1	Dichloroisopropyl ether	U068	74-95-3	Methylene bromide
U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-	U068	74-95-3	1,2-Benzenedicarboxylic acid, dibutyl ester
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	U069	84-74-2	Dibutyl phthalate
U028	117-81-7	Diethylhexyl phthalate	U070	95-50-1	Benzene, 1,2-dichloro-
U029	74-83-9	Methane, bromo-	U070	95-50-1	o-Dichlorobenzene
U029	74-83-9	Methyl bromide	U071	541-73-1	Benzene, 1,3-dichloro-
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-	U071	541-73-1	m-Dichlorobenzene
U030	101-55-3	4-Bromophenyl phenyl ether	U072	106-46-7	Benzene, 1,4-dichloro-
U031	71-36-3	1-Butanol (I)	U072	106-46-7	p-Dichlorobenzene
U031	71-36-3	n-Butyl alcohol (I)	U072	106-46-7	

U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	U114	(1)111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts and esters
U073	91-94-1	3,3'-Dichlorobenzidine	U114	(1)111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U074	764-41-0	2-Butene, 1,4-dichloro-(I,T)	U115	75-21-8	Ethylene oxide (I,T)
U074	764-41-0	1,4-Dichloro-2-butene (I,T)	U115	75-21-8	Oxirane (I,T)
U075	75-71-8	Dichlorodifluoromethane	U116	96-45-7	Ethylenethiourea
U075	75-71-8	Methane, dichlorodifluoro-	U116	96-45-7	2-Imidazolidinethione
U076	75-34-3	Ethane, 1,1-dichloro-	U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U076	75-34-3	Ethylidene dichloride	U117	60-29-7	Ethyl ether (I)
U077	107-06-2	Ethane, 1,2-dichloro-	U118	97-63-2	Ethyl methacrylate
U077	107-06-2	Ethylene dichloride	U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U078	75-35-4	1,1-Dichloroethylene	U119	62-50-0	Ethyl methanesulfonate
U078	75-35-4	Ethene, 1,1-dichloro-	U119	62-50-0	Methanesulfonic acid, ethyl ester
U079	156-60-5	1,2-Dichloroethylene	U120	206-44-0	Fluoranthene
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-	U121	75-69-4	Methane, trichlorofluoro-
U080	75-09-2	Methane, dichloro-	U121	75-69-4	Trichloromonofluoromethane
U080	75-09-2	Methylene chloride	U122	50-00-0	Formaldehyde
U081	120-83-2	2,4-Dichlorophenol	U123	64-18-6	Formic acid (C,T)
U082	120-83-2	Phenol, 2,4-dichloro-	U124	110-00-9	Furan (I)
U082	87-65-0	2,6-Dichlorophenol	U124	110-00-9	Furfuran (I)
U082	87-65-0	Phenol, 2,6-dichloro-	U125	98-01-1	2-Furancarboxaldehyde (I)
U083	78-87-5	Propane, 1,2-dichloro-	U125	98-01-1	Furfural (I)
U083	78-87-5	Propylene dichloride	U126	765-34-4	Glycidylaldehyde
U084	542-75-6	1,3-Dichloropropene	U126	765-34-4	Oxiranecarboxaldehyde
U084	542-75-6	1-Propene, 1,3-dichloro-	U127	118-74-1	Benzene, hexachloro-
U085	1464-53-5	2,2'-Bioxirane	U127	118-74-1	Hexachlorobenzene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)	U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U086	1615-80-1	N,N'-Diethylhydrazine	U128	87-68-3	Hexachlorobutadiene
U086	1615-80-1	Hydrazine, 1,2-diethyl-	U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U087	3288-58-2	0,0-Diethyl S-methyl dithiophosphate	U129	58-89-9	Lindane
U087	3288-58-2	Phosphorodithioic acid, 0,0-diethyl S-methyl ester	U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	U130	77-47-4	Hexachlorocyclopentadiene
U088	84-66-2	Diethyl phthalate	U131	67-72-1	Ethane, hexachloro-
U089	56-53-1	Diethylstilbesterol	U131	67-72-1	Hexachloroethane
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediy)bis-, (E)-	U132	70-30-4	Hexachlorophene
U090	94-58-6	1,3-Benzodioxole, 5-propyl-	U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
U090	94-58-6	Dihydrosofrole	U133	302-01-2	Hydrazine (R,T)
U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-	U134	7664-39-3	Hydrofluoric acid (C,T)
U091	119-90-4	3,3'-Dimethoxybenzidine	U134	7664-39-3	Hydrogen fluoride (C,T)
U092	124-40-3	Dimethylamine (I)	U135	7783-06-4	Hydrogen sulfide
U092	124-40-3	Methanamine, -methyl-(I)	U135	7783-06-4	Hydrogen sulfide H2S
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	U136	75-60-5	Arsinic acid, dimethyl-
U093	60-11-7	p-Dimethylaminoazobenzene	U136	75-60-5	Cacodylic acid
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-	U137	193-39-5	Indeno(1,2,3-cd)pyrene
U094	57-97-6	7,12-Dimethylbenz(a)anthracene	U138	74-88-4	Methane, iodo-
U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	U138	74-88-4	Methyl iodide
U095	119-93-7	3,3'-Dimethylbenzidine	U140	78-83-1	Isobutyl alcohol (I,T)
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)	U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U097	79-44-7	Carbamic chloride, dimethyl-	U141	120-58-1	Isosafrole
U097	79-44-7	Dimethylcarbomyl chloride	U142	143-50-0	Kepone
U098	57-14-7	1,1-Dimethylhydrazine	U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one,
U098	57-14-7	Hydrazine, 1,1-dimethyl-	U143	303-34-4	1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-
U099	540-73-8	1,2-Dimethylhydrazine	U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha,Z),7(2S*,3R*),7alpha))-
U099	540-73-8	Hydrazine, 1,2-dimethyl-	U143	303-34-4	Lasiocarpine
U101	105-67-9	2,4-Dimethylphenol	U144	301-04-2	Acetic acid, lead(2+) salt
U101	105-67-9	Phenol, 2,4-dimethyl-	U144	301-04-2	Lead acetate
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	U145	7446-27-7	Lead phosphate
U102	131-11-3	Dimethyl phthalate	U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U103	77-78-1	Dimethyl sulfate	U146	1335-32-6	Lead, bis(acetato-0)tetrahydroxytri-
U103	77-78-1	Sulfuric acid, dimethyl ester	U146	1335-32-6	Lead subacetate
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-	U147	108-31-6	2,5-Furandione
U105	121-14-2	2,4-Dinitrotoluene	U147	108-31-6	Maleic anhydride
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-	U148	123-33-1	Maleic hydrazide
U106	606-20-2	2,6-Dinitrotoluene	U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	U149	109-77-3	Malononitrile
U107	117-84-0	Di-n-octyl phthalate	U149	109-77-3	Propanedinitrile
U108	123-91-1	1,4-Diethyleneoxide	U150	148-82-3	Melphalan
U108	123-91-1	1,4-Dioxane	U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U109	122-66-7	1,2-Diphenylhydrazine	U151	7439-97-6	Mercury
U109	122-66-7	Hydrazine, 1,2-diphenyl-	U152	126-98-7	Methacrylonitrile (I,T)
U110	142-84-7	Dipropylamine (I)	U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U110	142-84-7	1-Propanamine, N-propyl-(I)	U153	74-93-1	Methanethiol (I,T)
U111	621-64-7	Di-n-propylnitrosamine	U153	74-93-1	Thiomethanol (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-	U154	67-56-1	Methanol (I)
U112	141-78-6	Acetic acid ethyl ester (I)			
U112	141-78-6	Ethyl acetate (I)			
U113	140-88-5	Ethyl acrylate (I)			
U113	140-88-5	2-Propenoic acid, ethyl ester (I)			

U154	67-56-1	Methyl alcohol (I)	U200	50-55-5	Reserpine
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-Methapyrilene	U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyloxy)-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U155	91-80-5	Methapyrilene			
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)			
U156	79-22-1	Methyl chlorocarbonate (I,T)	U201	108-46-3	1,3-Benzenediol
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	U201	108-46-3	Resorcinol
			U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
			U203	94-59-7	Safrole
U157	56-49-5	3-Methylcholanthrene	U204	7783-00-8	Selenious acid
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-chloro-	U204	7783-00-8	Selenium dioxide
			U205	7488-56-4	Selenium sulfide
			U205	7488-56-4	Selenium sulfide SeS2 (R,T)
			U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)	U206	18883-66-4	D-Glucose, 2-deoxy-2-((methylnitrosoamino)-carbonyl)amino)-
U159	78-93-3	2-Butanone (I,T)	U206	18883-66-4	Streptozotocin
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)	U207	95-94-3	Benzeno, 1,2,4,5-tetrachloro-
U160	1338-23-4	2-Butanone, peroxide (R,T)	U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)	U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U161	108-10-1	Methyl isobutyl ketone (I)	U208	630-20-6	1,1,1,2-Tetrachloroethane
U161	108-10-1	4-Methyl-2-pentanone (I)	U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U161	108-10-1	Pentanol, 4-methyl-	U209	79-34-5	1,1,2,2-Tetrachloroethane
U162	80-62-6	Methyl methacrylate (I,T)	U210	127-18-4	Ethene, tetrachloro-
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	U210	127-18-4	Tetrachloroethylene
			U211	56-23-5	Carbon tetrachloride
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-	U211	56-23-5	Methane, tetrachloro-
U163	70-25-7	MNNG	U213	109-99-9	Furan, tetrahydro-(I)
U164	56-04-2	Methylthiouracil	U213	109-99-9	Tetrahydrofuran (I)
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	U214	563-68-8	Acetic acid, thallium(1+) salt
			U214	563-68-8	Thallium(I) acetate
U165	91-20-3	Naphthalene	U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U166	130-15-4	1,4-Naphthalenedione	U215	6533-73-9	Thallium(I) carbonate
U166	130-15-4	1,4-Naphthoquinone	U216	7791-12-0	Thallium(I) chloride
U167	134-32-7	1-Naphthalenamine	U216	7791-12-0	Thallium chloride TlCl
U167	134-32-7	alpha-Naphthylamine	U217	10102-45-1	Nitric acid, thallium(1+) salt
U168	91-59-8	2-Naphthalenamine	U217	10102-45-1	Thallium(I) nitrate
U168	91-59-8	beta-Naphthylamine	U218	62-55-5	Ethanethioamide
U169	98-95-3	Benzene, nitro-	U218	62-55-5	Thioacetamide
U169	98-95-3	Nitrobenzene (I,T)	U219	62-56-6	Thiourea
U170	100-02-7	p-Nitrophenol	U220	108-88-3	Benzene, methyl-
U170	100-02-7	Phenol, 4-nitro-	U220	108-88-3	Toluene
U171	79-46-9	2-Nitropropane (I,T)	U221	25376-45-8	Benzenediamine, ar-methyl-
U171	79-46-9	Propane, 2-nitro- (I,T)	U221	25376-45-8	Toluenediamine
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-	U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U172	924-16-3	N-Nitrosodi-n-butylamine	U222	636-21-5	o-Toluidine hydrochloride
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-	U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U173	1116-54-7	N-Nitrosodiethanolamine	U223	26471-62-5	Toluene diisocyanate (R,T)
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-	U225	75-25-2	Bromoform
U174	55-18-5	N-Nitrosodiethylamine	U225	75-25-2	Methane, tribromo-
U176	759-73-9	N-Nitroso-N-ethylurea	U226	71-55-6	Ethane, 1,1,1-trichloro-
U176	759-73-9	Urea, N-ethyl-N-nitroso-	U226	71-55-6	Methyl chloroform
U177	684-93-5	N-Nitroso-N-methylurea	U226	71-55-6	1,1,1-Trichloroethane
U177	684-93-5	Urea, N-methyl-N-nitroso-	U227	79-00-5	Ethane, 1,1,2-trichloro-
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester	U228	79-01-6	1,1,2-Trichloroethane
			U228	79-01-6	Ethene, trichloro-
			U228	79-01-6	Trichloroethylene
U178	615-53-2	N-Nitroso-N-methylurethane	U234	99-35-4	Benzene, 1,3,5-trinitro-
U179	100-75-4	N-Nitrosopiperidine	U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U179	100-75-4	Piperidine, 1-nitroso-	U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U180	930-55-2	N-Nitrosopyrrolidine	U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U180	930-55-2	Pyrrolidine, 1-nitroso-	U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-	U237	66-75-1	Trypan blue
U181	99-55-8	5-Nitro-o-toluidine	U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-	U237	66-75-1	Uracil shallard
U182	123-63-7	Paraldehyde	U238	51-79-6	Carbamic acid, ethyl ester
U183	608-93-5	Benzene, pentachloro-	U238	51-79-6	Ethyl carbamate (urethane)
U183	608-93-5	Pentachlorobenzene	U239	1330-20-7	Benzene, dimethyl- (I,T)
U184	76-01-7	Ethane, pentachloro-	U239	1330-20-7	Xylene (I)
U184	76-01-7	Pentachloroethane	U240	(1)94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U185	82-68-8	Benzene, pentachloronitro-	U240	(1)94-75-7	2,4-D, salts and esters
U185	82-68-8	Pentachloronitrobenzene (PCNB)	U243	1888-71-7	Hexachloropropene
U186	504-60-9	1-Methylbutadiene (I)	U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U186	504-60-9	1,3-Pentadiene (I)	U244	137-26-8	Thioperoxydicarbonic diamide ((H2N)C(S))2 S2, tetramethyl-
U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-			
U187	62-44-2	Phenacetin	U244	137-26-8	Thiram
U188	108-95-2	Phenol	U246	506-68-3	Cyanogen bromide (CN)Br
U189	1314-80-3	Phosphorus sulfide (R)	U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-
U189	1314-80-3	Sulfur phosphide (R)	U247	72-43-5	Methoxychlor
U190	85-44-9	1,3-Isobenzofurandione			
U190	85-44-9	Phthalic anhydride			
U191	109-06-8	2-Picoline			
U191	109-06-8	Pyridine, 2-methyl-			
U192	23950-58-5	Benamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	U240	(1)94-75-7	2,4-D, salts and esters
			U243	1888-71-7	Hexachloropropene
U192	23950-58-5	Pronamide	U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide	U244	137-26-8	Thioperoxydicarbonic diamide ((H2N)C(S))2 S2, tetramethyl-
U193	1120-71-4	1,3-Propane sultone			
U194	107-10-8	1-Propanamine (I,T)	U244	137-26-8	Thiram
U194	107-10-8	n-Propylamine (I,T)	U246	506-68-3	Cyanogen bromide (CN)Br
U196	110-86-1	Pyridine	U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-
U197	106-51-4	p-Benzoquinone	U247	72-43-5	Methoxychlor
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione			

U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations of 0.3% or less
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, (1-(butylamino)carbonyl)-1H-benzimidazol-2-yl-, methyl ester
U278	22781-23-3	Bendiocarb
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63-25-2	Carbaryl
U279	63-25-2	1-Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4	o-Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0	p-Toluidine
U359	110-80-5	Ethanol, 2-ethoxy-
U359	110-80-5	Ethylene glycol monoethyl ether
U364	22961-82-6	Bendiocarb phenol
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1	A2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, (1,2-phenylenebis(iminocarbonothioyl))bis-, dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis((methylimino)carbonyloxy))bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	7-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-5	2,4,5-T
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol

**R315-261-35. Lists of Hazardous Wastes - Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.**

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of Subsections R315-261-35(b) and (c). These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:  
 (i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with Section R315-261-35;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with Section R315-261-35; or

(iii) Document cleaning and replacement in accordance with Section R315-261-35, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

- (A) The equipment to be cleaned;
- (B) How the equipment will be cleaned;
- (C) The solvent to be used in cleaning;
- (D) How solvent rinses will be tested; and
- (E) How cleaning residues will be disposed.

(ii) Equipment shall be cleaned as follows:

- (A) Remove all visible residues from process equipment;
- (B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses shall be tested by using an appropriate method.

(B) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL-0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking level of 1 ppt, final extraction volume of 10-50 microliters. For other congeners-multiply the values by 1 for T C D F / P e C D D / P e C D F, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

(iv) The generator shall manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

- (A) The equipment to be replaced;
- (B) How the equipment will be replaced; and
- (C) How the equipment will be disposed.

(ii) The generator shall manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with Section R315-261-35 and occurred after cessation of use of chlorophenolic preservations.

(c) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

- (1) The name and address of the facility;
- (2) Formulations previously used and the date on which their use ceased in each process at the plant;
- (3) Formulations currently used in each process at the plant;
- (4) The equipment cleaning or replacement plan;
- (5) The name and address of any persons who conducted the cleaning and replacement;
- (6) The dates on which cleaning and replacement were accomplished;
- (7) The dates of sampling and testing;
- (8) A description of the sample handling and preparation techniques, including techniques used for extraction,



containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative: I certify under penalty of law that all process equipment required to be cleaned or replaced under Section R315-261-35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

**R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It shall also be labeled: "Do not mix with other glass materials."

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a)(1)(ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c)(8). If they are used in a manner constituting disposal, they shall comply with the applicable requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a)(1) through (4), exporters of used, broken CRTs shall comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and

the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-39(a)(5)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in

kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections (ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

**R315-261-40. Exclusions and Exemptions - Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.**

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of Subsection R315-261-39(a)(5), and if they are not speculatively accumulated as defined in Subsection R315-261-1(c)(8).

**R315-261-41. Exclusions and Exemptions - Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.**

(a) CRT exporters who export used, intact CRTs for reuse shall send a notification to EPA. This notification may cover export activities extending over a 12 month or lesser period.

(1) The notification shall be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number, if applicable, of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their

handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused, including reuse after refurbishment, in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states: "I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(2) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse shall keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation shall be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse shall provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

**R315-261-140. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Applicability.**

(a) The requirements of Sections R315-261-140 through 143 and R315-261-147 through 151 and Appendix I to R315-261 apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under Subsection R315-261-4(a)(24), except as provided otherwise in Subsection R315-261-140(b).

(b) States and the Federal government are exempt from the financial assurance requirements of Sections R315-261-140 through 143 and R315-261-147 through 151.

**R315-261-141. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Definitions of Terms as Used in Sections R315-261-140 Through 151.**

The terms defined in 40 CFR 265.141(d), (f), (g), and (h), which are adopted by reference, have the same meaning in

Sections R315-140 through 143 and R315-261-147 through 151 as they do in 40 CFR 265.141, which is adopted by reference.

**R315-261-142. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Cost Estimate.**

(a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(1) The estimate shall equal the cost of conducting the activities described in Subsection R315-261-142(a) at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) The cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent corporation in 40 CFR 265.141(d), which is adopted by reference. The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference; facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference, that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-261-143. For owners and operators using the financial test or corporate guarantee, the cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-261-143(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in Subsections R315-261-142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in Subsection R315-261-142(a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in Subsection R315-261-142(a). The revised cost estimate shall be adjusted for inflation as specified in Subsection R315-261-142(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with Subsections R315-261-142(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-261-142(b), the latest

adjusted cost estimate.

**R315-261-143. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Financial Assurance Condition.**

As provided in Subsection R315-261-4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility shall have financial assurance as a condition of the exclusion as required under Subsection R315-261-4(a)(24). He shall choose from the options as specified in Subsections R315-261-143(a) through (e).

(a) Trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by establishing a trust fund which conforms to the requirements of Subsection R315-261-143(a) and submitting an originally signed duplicate of the trust agreement to the Director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-261-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-261-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund shall be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of Section R315-261-143.

(4) Whenever the current cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in Section R315-261-143 to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in Section R315-261-143 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsections R315-261-143(a)(5) or (6), the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing. If the owner or operator begins final closure under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Director shall instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as

he deems prudent until he determines, in accordance with 40 CFR 265.143(i), which is adopted by reference, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the trustee to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(8) The Director shall agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(b) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining a surety bond which conforms to the requirements of Subsection R315-261-143(b) and submitting the bond to the Director. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under Subsection R315-261-4(a)(24) or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Director becomes final, or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-261-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current

cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-261-143.

(c) Letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-261-143(c) and submitting the letter to the Director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(c).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number, if any issued; name; and address of the facility; and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or

operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Following a determination by the Director that the hazardous secondary materials do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the Director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in Section R315-261-143 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director shall draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-261-143 and obtain written approval of such assurance from the Director.

(10) The Director shall return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(d) Insurance.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining insurance which conforms to the requirements of Subsection R315-261-143(d) and submitting a certificate of such insurance to the Director. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Utah. (2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(d).

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate, except as provided in subsection R315-261-143(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The insurance policy shall guarantee that funds shall be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; as applicable, for the facilities covered by this policy. The policy shall also guarantee that once funds are needed, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) After beginning partial or final closure under Rules R315-264 or 265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the

Director shall instruct the insurer to make reimbursements in such amounts as the Director specifies in writing if the Director determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Director has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Subsection R315-261-143(h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Director does not instruct the insurer to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-261-143(i)(10). Failure to pay the premium, without substitution of alternate financial assurance as specified in Section R315-261-143, shall constitute a significant violation of these regulations warranting such remedy as the Director deems necessary. Such violation shall be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The Director deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Director.

(10) The Director shall give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(e) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by demonstrating that he passes a financial test as specified in Subsection R315-261-143(e). To pass this test the owner or operator shall meet the criteria of either Subsections R315-261-143(e)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, Subsection R315-261-151(e). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(e); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-143(e)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-143(e)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in Subsection R315-261-143(e)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that

fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, if any are issued; name; address; and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of Sections R315-261-140 through 143 and R315-261-147 through 151;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he shall submit the documents specified in Subsection R315-261-143 (e)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year shall be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-143(e)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-143(e)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-261-143. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-261-143(e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-261-143(e)(3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), the owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-143(e)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in Subsection R315-261-143(e)(3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(10) An owner or operator may meet the requirements of Section R315-261-143 by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with

a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsections R315-261-143(e)(1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(1). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-143(e)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) Following a determination by the Director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in Rules R315-264 or 265, as applicable, or establish a trust fund as specified in Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

(ii) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-261-143 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-261-143 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in Subsection R315-261-143(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-261-143 to meet the requirements of Section R315-261-143 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, if any issued; name; address; and the amount of funds assured by the mechanism. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his

financial assurance obligations under Subsection R315-261-4(a)(24)(vi)(F) shall submit a plan for removing all hazardous secondary material residues to the Director at least 180 days prior to the date on which he expects to cease to operate under the exclusion.

(2) The plan shall include, at least:

(A) For each hazardous secondary materials storage unit subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials shall be recycled or sent for recycling, and how all residues, contaminated containment systems, liners, etc; contaminated soils; subsoils; structures; and equipment shall be removed or decontaminated as necessary to protect human health and the environment, and

(B) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(C) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(D) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under Subsection R315-261-4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The Director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He shall also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Director shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Director shall approve, modify, or disapprove the plan within 90 days of its receipt. If the Director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director shall approve or modify this plan in writing within 60 days. If the Director modifies the plan, this modified plan becomes the approved plan. The Director shall assure that the approved plan is consistent with Subsection R315-261-143(h). A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(4) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator shall submit to the Director, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification shall be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director, upon request, until he releases the owner or operator from the financial assurance requirements for Subsection R315-261-4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of Section R315-261-143. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan as required in Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Director has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

**R315-261-147. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Liability Requirements.**

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-261-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required

liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Subsection R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-261-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section R315-260-10, which are used to manage hazardous secondary materials excluded under Subsection R315-261-4(a)(24) or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements of Section R315-261-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-261-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147.

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner



or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Section R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-261-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under Subsection R315-261-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(b)(1) through (b)(6).

(c) Request for alternative. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsection R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain an alternative financial liability requirement from the Director. The request for an alternative financial liability requirement shall be submitted in writing to the Director. If granted, the alternative financial liability requirement shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests an alternative financial liability requirement to provide such technical and engineering information as is deemed necessary by the Director to determine

a level of financial responsibility other than that required by Subsection R315-261-147(a) or (b).

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsections R315-261-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-261-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Director has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of Subsections R315-261-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least \$10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least \$10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-261-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Subsections R315-261-147(a) and (b) and the annual aggregate amounts for which coverage is required under Subsections R315-264-147(a) and (b) and 40 CFR 265.147(a) and (b), which are adopted by reference.

(3) To demonstrate that he meets this test, the owner or

operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by Subsection R315-261-143(e), and liability coverage, he shall submit the letter specified in Subsection R315-261-151(f) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-261-151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-147(f)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-147(f)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-261-147(f)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-261-147(f)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-261-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test

requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-261-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-261-147(g)(2), an owner or operator may meet the requirements of Section R315-261-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsection R315-261-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(2)(i) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-261-147 only if the non-U.S. corporation has identified a registered agent for service of process in Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-261-147(h) and submits a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or Utah agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical

to the wording specified in Subsection R315-261-151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-261-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(k).

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by establishing a trust fund that conforms to the requirements of Subsection R315-261-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-261-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-261-147 to cover the difference. For purposes of Subsection R315-261-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-261-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-261-151(l).

**R315-261-148. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Incapacity of Owners or Operators, Guarantors, or Financial Institutions.**

(a) An owner or operator shall notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subsection R315-261-143(e) shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of Sections R315-261-143 or R315-261-147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

**R315-261-151. Financial Requirements for Management of Excluded Hazardous Secondary Materials -- Wording of the Instruments.**

(a)(1) A trust agreement for a trust fund, as specified in

Subsection R315-261-143(a) shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

**Trust Agreement**

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of \_\_\_\_" or "a national bank"), the "Trustee."

Whereas, the Utah Waste Management and Radiation Control Board of the State of Utah, (the "BOARD") has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under Rules R315-264, or 265, or satisfying the conditions of the exclusion under Subsection R315-261-4(a)(24) shall provide assurance that funds shall be available if needed for care of the facility under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference; as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "BOARD", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(d) The term "DIRECTOR" means the Director, Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the EPA Identification Number, if available; name; address; and the current cost estimates, or portions thereof; for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Director in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by Director.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of the

performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference, for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates

representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be

in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of (insert name of State).

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund as specified in Subsection R315-261-143(a). State of Utah requirements may differ on the proper content of this acknowledgment.

State of County of On this (date), before me personally came (owner or operator) to me known, who, being by me duly

sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(b) A surety bond guaranteeing payment into a trust fund, as specified in Subsection R315-261-143(b), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: (legal name and business address of owner or operator)

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:

Surety(ies): (name(s) and business address(es))

EPA and State Identification Numbers, name, address and amount(s) for each facility guaranteed by this bond:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Director of the Division of Waste management and Radiation Control of the State of Utah (hereinafter called the Director) in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Utah Solid and Hazardous Waste Act as amended, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under Subsection R315-261-4(a)(24), and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under Subsection R315-261-4(a)(24) and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under Subsection R315-261-4(a)(24),

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Sections R315-261-140 through 143

and R315-261-147 through 151, as applicable, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(b) as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)Corporate Surety(ies)

(Name and address)

State of incorporation:Liability limit:

\$(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$

(c) A letter of credit, as specified in Subsection R315-261-143(c), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

(Director name), Director,

Division of Waste Management and Radiation Control

195 North 1950 West

P.O Box 144880

Salt Lake City, Utah 84114-4880

Dear Director: We hereby establish our Irrevocable

Standby Letter of Credit No. \_\_\_\_\_ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$ \_\_\_\_\_, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Utah Solid and Hazardous Waste Act as amended."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (owner's or operator's name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(c) as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution)  
(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(d) A certificate of insurance, as specified in Subsection R315-261-143(d), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: (List for each facility: The EPA and State Identification Numbers (if any issued), name, address, and the amount of insurance for all facilities covered, which shall total the face amount shown below.)

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Subsection R315-261-143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director of the Division of Waste Management and Radiation Control, the Insurer agrees

to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Subsection R315-261-151(d) such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:(Date)

(e) A letter from the chief financial officer, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

195 North 1950 West

P.O. Box 144880

Salt Lake City, UT 84114-4880

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State Identification Numbers (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_, or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current

closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions and states where the Director is not authorized to administer the financial requirements of R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates shown in the nine paragraphs above) \$ \_\_\_\_\_

\*2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ \_\_\_\_\_

\*3. Tangible net worth \$ \_\_\_\_\_

\*4. Net worth \$ \_\_\_\_\_ -

\*5. Current assets \$ \_\_\_\_\_

\*6. Current liabilities \$ \_\_\_\_\_

7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_

\*8. The sum of net income plus depreciation, depletion,

and amortization \$ \_\_\_\_\_

\*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

10. Is line 3 at least \$10 million? (Yes/No) \_\_\_\_\_

11. Is line 3 at least 6 times line 1? (Yes/No) \_\_\_\_\_

12. Is line 7 at least 6 times line 1? (Yes/No) \_\_\_\_\_

\*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) \_\_\_\_\_

14. Is line 9 at least 6 times line 1? (Yes/No) \_\_\_\_\_

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \_\_\_\_\_

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \_\_\_\_\_

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \_\_\_\_\_

Alternative II

1. Sum of current cost estimates (total of all cost estimates shown in the eight paragraphs above) \$ \_\_\_\_\_

2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_

3. Date of issuance of bond \_\_\_\_\_

4. Date of maturity of bond \_\_\_\_\_

\*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_

8. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_\_

\*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) \_\_\_\_\_

10. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_\_

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(e) as such regulations were constituted on the date shown immediately below.

(Signature) (Name) (Title) (Date)

(f) A letter from the chief financial officer, as specified in Subsection R315-261-147(f), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

P.O. 144880

Salt Lake City, Utah 84114-4880

I am the chief financial officer of (firm's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under Section R315-261-147(insert "and costs assured Subsection R315-261-143(e)" if applicable) as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151: \_\_\_\_\_

The firm identified above guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental

occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee - \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_.) (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; \_\_\_\_\_

The firm identified above guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

(If you are using the financial test to demonstrate coverage of both liability and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which are adopted by reference; fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State identification number (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current



cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_).

(Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions, and states where the Director is not authorized to administer the financial requirements of R315-264.264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

Part A. Liability Coverage for Accidental Occurrences  
(Fill in Alternative I if the criteria of Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_.
- \*2. Current assets \$ \_\_\_\_\_.
- \*3. Current liabilities \$ \_\_\_\_\_.
4. Net working capital (line 2 minus line 3) \$ \_\_\_\_\_.
- \*5. Tangible net worth \$ \_\_\_\_\_.
- \*6. If less than 90% of assets are located in the U.S., give total U.S. assets \$ \_\_\_\_\_.
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_.
8. Is line 4 at least 6 times line 1? (Yes/No) \_\_\_\_\_.
9. Is line 5 at least 6 times line 1? (Yes/No) \_\_\_\_\_.
- \*10. Are at least 90% of assets located in the U.S.? (Yes/No) \_\_\_\_\_. If not, complete line 11.
11. Is line 6 at least 6 times line 1? (Yes/No) \_\_\_\_\_.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_.
2. Current bond rating of most recent issuance and name of rating service \_\_\_\_\_.
3. Date of issuance of bond \_\_\_\_\_.
4. Date of maturity of bond \_\_\_\_\_.
- \*5. Tangible net worth \$ \_\_\_\_\_.
- \*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_\_.
7. Is line 5 at least \$10 million? (Yes/No) \_\_\_\_\_.
8. Is line 5 at least 6 times line 1? \_\_\_\_\_.
9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) \_\_\_\_\_.
10. Is line 6 at least 6 times line 1? \_\_\_\_\_.

(Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which is adopted by reference.)

Part B. Facility Care and Liability Coverage

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) and Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) and Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_.
2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_.
3. Sum of lines 1 and 2 \$ \_\_\_\_\_.
- \*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) \$ \_\_\_\_\_.
- \*5. Tangible net worth \$ \_\_\_\_\_.
- \*6. Net worth \$ \_\_\_\_\_.
- \*7. Current assets \$ \_\_\_\_\_.
- \*8. Current liabilities \$ \_\_\_\_\_.
9. Net working capital (line 7 minus line 8) \$ \_\_\_\_\_.
- \*10. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_.
- \*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_\_.
12. Is line 5 at least \$10 million? (Yes/No)
13. Is line 5 at least 6 times line 3? (Yes/No)
14. Is line 9 at least 6 times line 3? (Yes/No)
- \*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.
16. Is line 11 at least 6 times line 3? (Yes/No)
17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) \$ \_\_\_\_\_

2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_

3. Sum of lines 1 and 2 \$ \_\_\_\_\_

4. Current bond rating of most recent issuance and name of rating service \_\_\_\_\_

5. Date of issuance of bond \_\_\_\_\_

6. Date of maturity of bond \_\_\_\_\_

\*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) \$ \_\_\_\_\_

\*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) \$ \_\_\_\_\_

9. Is line 7 at least \$10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

\*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(f) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(g)(1) A corporate guarantee, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Facility Care

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in Subsections R315-264-141(h) and 40 CFR 265.141(h), which is adopted by reference," to the Director of the Utah Division of Waste Management and Radiation Control (the Director).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-143(e).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and State Identification Number (if any issued), name, and address.

3. "Closure plans" as used below refer to the plans maintained as required by Sections R315-261-140 through 143 and R315-261-147 through 151 for the care of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees that in the event of a determination by the Director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in Sections R315-264-110 through 120 or 40 CFR 265-110 through 121 which are adopted by reference, as applicable, or establish a trust fund as specified in

Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Sections R315-261-140 through 143 and R315-261-147 through 151, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 through 151, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to Rules R315-264, 265, or Sections R315-261-140 through 143 and R315-261-147 through 151.

9. Guarantor agrees to remain bound under this guarantee for as long as (owner or operator) shall comply with the applicable financial assurance requirements of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate coverage complying with Section R315-261-143.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator)

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 through 151, as applicable, and obtain written approval of such assurance from the Director within 90 days after a notice of cancellation by the guarantor is received by the Director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Director or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of Sections R315-

264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 through 151.

I hereby certify that the wording of this guarantee is identical to the wording specified in Subsection R315-261-151(g)(1) as such regulations were constituted on the date first above written.

Effective date: (Name of guarantor) (Authorized signature for guarantor) (Name of person signing) (Title of person signing) Signature of witness or notary:

(2) A guarantee, as specified in Subsection R315-261-147(g), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

#### Guarantee for Liability Coverage

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert "the State of \_\_\_" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is one of the following: "our subsidiary;" "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in (either Subsection R315-264-141(h) or 40 CFR 265.141(h), which is adopted by reference)", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-147(g).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and state identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.) This corporate guarantee satisfies RCRA third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert owner or operator) would be obligated to pay in the absence of

the contract or agreement.

(b) Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert owner or operator). This exclusion applies:

(A) Whether (insert owner or operator) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert owner or operator);

(2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert owner or operator);

(4) Personal property in the care, custody or control of (insert owner or operator);

(5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate liability coverage as specified in Section R315-261-147, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in Section R315-261-147 in the name of (owner or operator), unless (owner or operator) has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Section R315-261-147, provided that such modification shall become effective only if the Director does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable requirements of Section R315-261-147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

9. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

10. Guarantor may terminate this guarantee by sending

notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate liability coverage complying with Section R315-261-147.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator):

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

**Certification of Valid Claim**

The undersigned, as parties (insert Principal) and (insert name and address of third-party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) facility should be paid in the amount of \$ .

(Signatures) Principal (Notary) Date (Signatures)  
Claimant(s) (Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee shall be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Subsection R315-261-151(g)(2) as such regulations were constituted on the date shown immediately below.

Effective date:

(Name of guarantor) (Authorized signature for guarantor)  
(Name of person signing) (Title of person signing)

Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required by Section R315-261-147 shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

**Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement**

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Section R35-261-147. The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsection R315-261-147(f).

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of this endorsement shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

Attached to and forming part of policy No. \_\_\_ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of insured) of (address) this \_\_\_ day of \_\_\_\_\_, 20\_\_\_. The effective date of said policy is \_\_\_ day of \_\_\_\_\_, 20\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in Subsection R315-261-151(h) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(i) A certificate of liability insurance as required in Section R315-261-147 shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

**Hazardous Secondary Material Reclamation/Intermediate Facility Certificate of Liability Insurance**

1. (Name of Insurer), (the "Insurer"), of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of insured), (the "insured"), of (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under Rules R315-264 and 265, and the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F). The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The

coverage is provided under policy number, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Section R315-261-147.

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of the insurance shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

I hereby certify that the wording of this instrument is identical to the wording specified in Subsection R315-261-151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(j) A letter of credit, as specified in Subsection R315-261-147(h) of this chapter, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

(Name and Address of Issuing Institution)

(Director name), Director,

Division of Waste Management and Radiation Control

195 North 1950 West

P.O Box 144880

Salt Lake City, Utah 84114-4880

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the favor of ("any and all third-party liability claimants" or insert name of trustee of the standby trust fund), at the request and for the account of (owner or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars \$ \_\_\_\_\_ per occurrence and the annual aggregate amount of (in words) U.S. dollars \$ ---, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of (in words) U.S. dollars \$ \_\_\_\_\_ per occurrence, and the annual aggregate amount of (in words) U.S. dollars \$ \_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. \_\_\_\_\_, and (insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties (insert principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a

(sudden or nonsudden) accidental occurrence arising from operations of (principal's) facility should be paid in the amount of \$( ). We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal).

This exclusion applies:

(A) Whether (insert principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert principal);

(2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert principal);

(4) Personal property in the care, custody or control of (insert principal);

(5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures)

Grantor

(Signatures)

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.)

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

(Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary" or "excess" coverage)."

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(j) as such regulations were constituted on the date shown immediately below.

(Signature(s)  
and title(s) of official(s) of issuing institution)  
(Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(k) A surety bond, as specified in Subsection R315-261-147(i), shall be worded as follows: except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Payment Bond  
Surety Bond No. (Insert number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (Insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies)), Surety Company(ies), of (Insert surety(ies) place of business).

(EPA and State Identification Number (if any issued), name, and address for each facility guaranteed by this bond:)

TABLE

	Nonsudden accidental occurrences	Sudden accidental occurrences
Penal Sum Per Occurrence	(insert amount)	(insert amount)
Annual Aggregate	(insert amount)	(insert amount)

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules adopted by the Utah Waste Management and Radiation Control Board, particularly Rules R315-264; 265, that is adopted by reference; and Sections R315-261-140 through 143 and R315-261-147 through 151 (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert Principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Principal) under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of (insert Principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Principal). This exclusion applies:

(A) Whether (insert Principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay

another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Principal);

(2) Premises that are sold, given away or abandoned by (insert Principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Principal);

(4) Personal property in the care, custody or control of (insert Principal);

(5) That particular part of real property on which (insert Principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert Principal) are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert name of Principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) facility should be paid in the amount of \$( ).

(Signature)

Principal

(Notary) Date

(Signature(s))

Claimant(s)

(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond shall be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Director.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations

and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate Seal)

CORPORATE SURETY(IES)

(Name and address)

State of incorporation: Liability Limit: \$(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$

(l)(1) A trust agreement, as specified in Subsection R315-261-147(j), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of \_\_\_\_" or "a national bank"), the "trustee."

Whereas, the Waste Management and Radiation Control Board of the State of Utah, "the Board", has established certain regulations applicable to the Grantor, requiring that an owner or operator shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "BOARD", "Utah Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director, of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on

schedule A, for each facility list the EPA and State Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_-(up to \$1 million) per occurrence and (up to \$2 million) annual aggregate for sudden accidental occurrences and \_\_\_\_ (up to \$3 million) per occurrence and \_\_\_\_-(up to \$6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor). This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making

payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

**Certification of Valid Claim**

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) facility or group of facilities should be paid in the amount of \$( ).

(Signatures)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No

person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court



of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be

administered, construed, and enforced according to the laws of the State of Utah.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(l) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in Subsection R315-261-147(j). State requirements may differ on the proper

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

(Signature of Notary Public)

(m)(1) A standby trust agreement, as specified in Subsection R315-261-147(h), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of a State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of \_\_\_\_\_" or "a national bank"), the "trustee."

Whereas the Utah Waste Management and Radiation Control Board (Board), has established certain regulations applicable to the Grantor, requiring that an owner or operator shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Board", "Utah Waste Management and Radiation Control Board" created pursuant to Utah Code

Annotated 19-1-106.

(b) The term "Director" means the Director, of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA and State Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_-(up to \$1 million) per occurrence and \_\_\_\_-(up to \$2 million) annual aggregate for sudden accidental occurrences and \_\_\_\_-(up to \$3 million) per occurrence and \_\_\_\_-(up to \$6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned by (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) facility should be paid in the amount of \$(

) (Signature)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of Subsection R315-261-151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund

created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the

Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(m) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:  
(Title)  
(Seal)  
(Signature of Trustee)

Attest:  
(Title)  
(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in Subsection R315-261-147(h).

State of  
County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

(Signature of Notary Public)

**R315-261-170. Use and Management of Containers - Applicability.**

Sections R315-261-170 through 179 apply to hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) and stored in containers.

**R315-261-171. Use and Management of Containers - Condition of Containers.**

If a container holding hazardous secondary material is not in good condition, e.g., severe rusting, apparent structural defects, or if it begins to leak, the hazardous secondary material shall be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of Rule R315-261.

**R315-261-172. Use and Management of Containers - Compatibility Of Hazardous Secondary Materials With Containers.**

The container shall be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

**R315-261-173. Use and Management of Containers - Management of Containers.**

(a) A container holding hazardous secondary material shall always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

**R315-261-175. Use and Management of Containers - Containment.**

(a) Container storage areas shall have a containment system that is designed and operated in accordance with Subsection R315-261-175(b).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base shall be sloped or the containment system

shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system shall have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

(4) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in Subsection R315-261-175(b)(3) to contain any run-on which might enter the system; and

(5) Spilled or leaked material and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

**R315-261-176. Use and Management of Containers - Special Requirements for Ignitable or Reactive Hazardous Secondary Material.**

Containers holding ignitable or reactive hazardous secondary material shall be located at least 15 meters (50 feet) from the facility's property line.

**R315-261-177. Use and Management of Containers - Special Requirements for Incompatible Materials.**

(a) Incompatible materials shall not be placed in the same container.

(b) Hazardous secondary material shall not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

**R315-261-179. Use and Management of Containers - Air Emission Standards.**

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089.

**R315-261-190. Tank Systems - Applicability.**

(a) The requirements of Sections R315-261-190 through 200 apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(b) Tank systems, including sumps, as defined in Section R315-260-10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in Subsection R315-261-193(a).

**R315-261-191. Tank Systems - Assessment of Existing Tank System's Integrity.**

(a) Tank systems shall meet the secondary containment requirements of Section R315-261-193, or the remanufacturer or other person that handles the hazardous secondary material shall determine that the tank system is not leaking or is unfit for use. Except as provided in Subsection R315-261-191(c), a written assessment reviewed and certified by a qualified Professional Engineer shall be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to

ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

- (1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;
  - (2) Hazardous characteristics of the material(s) that have been and will be handled;
  - (3) Existing corrosion protection measures;
  - (4) Documented age of the tank system, if available, otherwise, an estimate of the age; and
  - (5) Results of a leak test, internal inspection, or other tank integrity examination such that:
    - (i) For non-enterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and
    - (ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.
- Note to Subsection R315-261-191(b)(5)(ii): The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) If, as a result of the assessment conducted in accordance with Subsection R315-261-191(a), a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196.

### **R315-261-193. Tank Systems - Containment and Detection of Releases.**

- (a) Secondary containment systems shall be:
- (1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and
  - (2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to Subsection R315-261-193(a): If the collected material is a hazardous waste under Rule R315-261, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through 265, 266, and 268. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

- (b) To meet the requirements of Subsection R315-261-193(a), secondary containment systems shall be at a minimum:
- (1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients, including static head and external hydrological forces, physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation, (including stresses from nearby vehicular traffic;
  - (2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;
  - (3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the

primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks shall include one or more of the following devices:

- (1) A liner, external to the tank;
  - (2) A vault; or
  - (3) A double-walled tank.
- (d) In addition to the requirements of Subsections R315-261-193(a), (b), and (c), secondary containment systems shall satisfy the following requirements:
- (1) External liner systems shall be:
    - (i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
    - (ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.
    - (iii) Free of cracks or gaps; and
    - (iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s), i.e., capable of preventing lateral as well as vertical migration of the material.

(2) Vault systems shall be:

- (i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints, if any;

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks shall be:

- (i) Designed as an integral structure, i.e., an inner tank completely enveloped within an outer shell, so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

Note to Subsection R315-261-193(d)(3): The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) Reserved

(f) Ancillary equipment shall be provided with secondary containment, e.g., trench, jacketing, double-walled piping, that meets the requirements of Subsections R315-261-193(a) and (b) except for:

- (1) Aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;
- (2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;
- (3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and
- (4) Pressurized aboveground piping systems with automatic shut-off devices, e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

**R315-261-194. Tank Systems - General Operating Requirements.**

(a) Hazardous secondary materials or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

- (1) Spill prevention controls, e.g., check valves, dry disconnect couplings;
- (2) Overfill prevention controls, e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank; and
- (3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196 if a leak or spill occurs in the tank system.

**R315-261-196. Tank Systems - Response To Leaks or Spills and Disposition of Leaking or Unfit-For-Use Tank Systems.**

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material shall satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of material from tank system or secondary containment system.

(1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material shall, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately conduct a visual inspection of the release and, based upon that inspection:

- (1) Prevent further migration of the leak or spill to soils or surface water; and
- (2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in Subsection R315-261-196(d)(2), shall be reported to the Director within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of Subsection R315-261-196(d) if it is:

- (i) Less than or equal to a quantity of 1 pound, and
- (ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Director:

- (i) Likely route of migration of the release;
- (ii) Characteristics of the surrounding soil, soil composition, geology, hydrogeology, climate;
- (iii) Results of any monitoring or sampling conducted in connection with the release, if available. If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Director as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of Subsections R315-261-196(e)(2) through (4), the tank system shall cease to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section R315-261-193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of Subsection R315-261-196(f) are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, e.g., the bottom of an inground or onground tank, the entire component shall be provided with secondary containment in accordance with Section R315-261-193 prior to being returned to use.

(f) Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with Subsection R315-261-196(e), and the repair has been extensive,

e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, the tank system shall not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification shall be kept on file at the facility and maintained until closure of the facility.

Note 1 to Section R315-261-196: The Director may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to Section R315-261-196: 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

**R315-261-197. Tank Systems - Termination of Remanufacturing Exclusion.**

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under Rules R315-261 through 266, 268, 270, and 124, as applicable.

**R315-261-198. Tank Systems - Special Requirements for Ignitable or Reactive Materials.**

(a) Ignitable or reactive material shall not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive shall store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), incorporated by reference, see Section R315-260-11.

**R315-261-199. Tank Systems - Special Requirements for Incompatible Materials.**

(a) Incompatible materials shall not be placed in the same tank system.

(b) Hazardous secondary material shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

**R315-261-200. Tank Systems - Air Emission Standards.**

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064, and 1080 through 1089.

**R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.**

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are

generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility, that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

**R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.**

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility shall attempt to make the

following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility shall document the refusal in the operating record.

**R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.**

A generator or an intermediate or reclamation facility that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R315-263-33. The report shall include the following

information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident, e.g., spill or fire;

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

**R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.**

A generator or an intermediate or reclamation facility that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-261-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems,



spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous secondary material handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents

used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Personnel training. All employees must be thoroughly

familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

#### **R315-261-1030. Air Emission Standards for Process Vents - Applicability.**

The regulations in Sections R315-261-1030 through 1035 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

#### **R315-261-1031. Air Emission Standards for Process Vents - Definitions.**

(a) As used in Sections R315-261-1030 through 1035, all terms not defined herein shall have the meaning given them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(2) "Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(3) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(4) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(5) "Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(6) "Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

(7) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale, e.g., a primary condenser on a solvent recovery unit, is not a control device.

(8) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(9) "Distillate receiver" means a container or tank used to receive and collect liquid material, condensed, from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(10) "Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(11) "Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

(12) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by Sections R315-261-1030 through 1035.

(13) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(14) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(15) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(16) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(17) "Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

(18) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(19) "In gas/vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

(20) "In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

(21) "In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 degrees C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

(22) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(23) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(24) "Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

(25) "Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

(26) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(27) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(28) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank, e.g., distillate receiver, condenser, bottoms receiver, surge control tank,

separator tank, or hot well, associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(29) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(30) "Sampling connection system" means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

(31) "Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(32) "Separator tank" means a device used for separation of two immiscible liquids.

(33) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent, the two being mutually insoluble, to preferentially dissolve and transfer one or more components into the solvent.

(34) "Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

(35) "Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(36) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(37) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(38) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(39) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical" means such as compressors or vacuum-producing systems or by process-related" means such as evaporation produced by heating and not caused by tank loading and unloading, working losses, or by natural" means such as diurnal temperature changes.

### **R315-261-1032. Air Emission Standards for Process Vents - Process Vents.**

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of Subsection R315-261-1032(a) the closed-vent system and control device shall meet the requirements of Section R315-261-1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Subsection R315-261-1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Subsection R315-261-1034(c) shall be used to resolve the disagreement.

### **R315-261-1033. Air Emission Standards for Process Vents - Closed-Vent Systems and Control Devices.**

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of Rule R315-261 shall comply with the provisions of Sections R315-261-1033.

(2) Reserved

(b) A control device involving vapor recovery, e.g., a condenser or adsorber, shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-261-1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device, e.g., a vapor incinerator, boiler, or process heater, shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 deg. C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in Subsection R315-261-1033(e)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in Subsection R315-261-1033(f)(2)(iii).

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in Subsection R315-261-1033(e)(2).

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), less than 18.3 m/s (60 ft/s), except as provided in Subsections R315-261-1033(d)(4)(ii) and (iii).

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and

operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), less than the velocity,  $V_{max}$ , as determined by the method specified in Subsection R315-261-1033(e)(4) and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity,  $V_{max}$ , as determined by the method specified in Subsection R315-261-1033(e)(5).

(6) A flare used to comply with Section R315-261-1033 shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of Sections R315-261-1030 through 1035. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation: The equation found in 40 CFR 261.1033(e)(2) 2015 ed is adopted and incorporated by reference.

Where:

$H_T$  = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degrees C;

$K$  = Constant,  $1.74 \times 10^{-7}$  (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 deg. C;

$C_i$  = Concentration of sample component  $i$  in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82, incorporated by reference as specified in Section R315-260-11; and

$H_i$  = Net heat of combustion of sample component  $i$ , kcal/9 mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83, incorporated by reference as specified in Section R315-260-11, if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate, in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed, free, cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s,  $V_{max}$ , for a flare complying with Subsection R315-261-1033(d)(4)(iii) shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

Where:

28.8 = Constant,

31.7 = Constant,

$H_T$  = The net heating value as determined in Subsection R315-261-1033(e)(2).

(5) The maximum allowed velocity in m/s,  $V_{max}$ , for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_T)$$

Where:

8.706 = Constant,

0.7084 = Constant,

$H_T$  = The net heating value as determined in Subsection R315-261-1033(e)(2).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the

vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of plus/minus 1 percent of the temperature being monitored in degrees Celsius (deg. C) or plus/minus 0.5 deg. C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit, i.e., product side.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by Subsections R315-261-1033(f)(1) and (2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of Section R315-261-1033.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon

service life established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter shall ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of Rule R315-261 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in Subsection R315-261-1034(b), and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(1) shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to Section R315-261-1033. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in Subsection R315-261-1033(l)(1)(i), the remanufacturer or other

person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed, e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange, shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in Subsection R315-261-1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced, e.g., a section of damaged hard piping is replaced with new hard piping, or the connection is unsealed, e.g., a flange is unbolted.

(B) Closed-vent system components or connections other than those specified in Subsection R315-261-1033(l)(1)(ii)(A) shall be monitored annually and at other times as requested by the Director, except as provided for in Subsection R315-261-1033(o), using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(2) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(2) shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to Section R315-261-1033. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in Subsection R315-261-1033(l)(3)(iii).

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the

remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in Section R315-261-1035.

(m) Closed-vent systems and control devices used to comply with provisions of Sections R315-261-1030 through 1035 shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-600 through 603; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Sections R315-261-1030 through 1035 and 1080 through 1089 or subparts AA and CC of 40 CFR 265 which is incorporated in R315-265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through 351; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O, which is incorporated by Rule R315-265.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through 112; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through 112.

(o) Any components of a closed-vent system that are designated, as described in Subsection R315-261-1035(c)(9), as unsafe to monitor are exempt from the requirements of Subsection R315-261-1033(l)(1)(ii)(B) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1033(l)(1)(ii)(B); and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in Subsection R315-261-1033(l)(1)(ii)(B) as frequently as practicable during safe-to-monitor times.

#### **R315-261-1034. Air Emission Standards for Process Vents - Test Methods and Procedures.**

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1030 through 1035 shall comply with the test methods and procedural requirements provided in Section R315-261-1034.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Subsection R315-261-1033(l), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Subsection R315-261-1032(a) and with the total organic compound concentration limit of Subsection R315-261-1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas shall be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

The equation found in 40 CFR 261.1034(c)(1)(iv)(A), 2015 ed. is adopted and incorporated by reference

Where:

$E_h$  = Total organic mass flow rate, kg/h;

$Q_{2sd}$  = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

$n$  = Number of organic compounds in the vent gas;

$C_i$  = Organic concentration in ppm, dry basis, of compound  $i$  in the vent gas, as determined by Method 18;

MW<sub>i</sub> = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> (at 293 K and 760 mm Hg);

10<sup>-6</sup> = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_i = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

$E_i$  = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> (at 293 K and 760 mm Hg);

10<sup>-6</sup> = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_n)(H)$

Where:

$E_A$  = Total organic mass emission rate, kg/y;

$E_n$  = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates,  $E_n$ , as determined in Subsection R315-261-1034(c)(1)(iv), and by summing the annual total organic mass emission rates,  $E_A$ , as determined in Subsection R315-261-1034(c)(1)(v), for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in Subsection R315-261-1034(c)(1).

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of Sections R315-261-1030 through 1035, the remanufacturer or other person that stores or treats the hazardous secondary material shall make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples shall be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples shall be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035 or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at Subsection R315-261-1034(d)(1).

#### **R315-261-1035. Air Emission Standards for Process Vents - Recordkeeping Requirements.**

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions

of Sections R315-261-1030 through 1035 shall comply with the recordkeeping requirements of Section R315-261-1035.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1030 through 1035 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the following records on-site:

(1) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035.

(2) Up-to-date documentation of compliance with the process vent standards in Subsection R315-261-1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, i.e., the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, e.g., identify the hazardous secondary material management units on a facility plot plan.

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or vent stream organic compounds and concentrations, that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan shall be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring

procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Subsection R315-261-1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by Subsection R315-261-1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions," incorporated by reference as specified in R315-260-11, or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsections R315-261-1035(b)(4)(iii)(A) through (G) may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Subsection R315-261-1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall



also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Subsection R315-261-1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Subsection R315-261-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Rule R315-261 shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Subsections R315-261-1033(f)(1) and (2).

(3) Monitoring, operating, and inspection information required by Subsections R315-261-1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 deg. C, period when the combustion temperature is below 760 deg. C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(A).

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B), or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B).

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(C), or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a

requirement of Subsection R315-261-1035(b)(4)(iii)(C).

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(vii) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 degrees C above the design average exhaust vent stream temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E); or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the condenser outlet established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(5) Explanation for each period recorded under Subsection R315-261-1035(c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in Subsections R315-261-1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in Subsection R315-261-1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to Subsection R315-261-1033(o) shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Subsection R315-261-1033(o), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in Subsection R315-261-1033(l), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there shall be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by Subsections R315-261-1035(c)(3) through (10) shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Subsection R315-261-1032 including supporting documentation as required by Subsection R315-261-1034(d)(2) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

#### **R315-261-1050. Air Emission Standards for Equipment Leaks - Applicability.**

(a) The regulations in Sections R315-261-1050 through 1064 apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

#### **R315-261-1051. Air Emission Standards for Equipment Leaks - Definitions.**

As used in Sections R315-261-1050 through 1064, all terms shall have the meaning given them in Section R315-261-1031, the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

#### **R315-261-1052. Air Emission Standards: Pumps in Light Liquid Service.**

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section R315-261-1063(b), except as provided in Subsections R315-261-1052(d), (e), and (f).

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing

gland, shall be made no later than five calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of Subsection R315-261-1052(a), provided the following requirements are met:

(1) Each dual mechanical seal system shall be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-261-1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in Subsection R315-261-1052(d)(3) shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in Subsection R315-261-1052(d)(5)(ii), a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(iii) A first attempt at repair, e.g., relapping the seal, shall be made no later than five calendar days after each leak is detected.

(e) Any pump that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsections R315-261-1052(a), (c), and (d) if the pump meets the following requirements:

(1) Shall have no externally actuated shaft penetrating the pump housing.

(2) Shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section R315-261-1063(c).

(3) Shall be tested for compliance with Subsection R315-261-1052(e)(2) initially upon designation, annually, and at other times as requested by the Director.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section R315-261-1060, it is exempt from the requirements of Subsections R315-261-1052(a) through (e).

#### **R315-261-1053. Air Emission Standards: Compressors.**

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in Subsections R315-261-1053(h) and (i).

(b) Each compressor seal system as required in Subsection R315-261-1053(a) shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-261-1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in Subsections R315-261-1053(a) through (c) shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in Subsection R315-261-1053(d) shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under Subsection R315-261-1053(e)(2), a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of Subsections R315-261-1053(a) and (b) if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section R315-261-1060, except as provided in Subsection R315-261-1053(i).

(i) Any compressor that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of Subsections R315-261-1053(a) through (h) if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section R315-261-1063(c).

(2) Is tested for compliance with Subsection R315-261-1053(i)(1) initially upon designation, annually, and at other times as requested by the Director.

**R315-261-1054. Air Emission Standards: Pressure Relief Devices in Gas/Vapor Service.**

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section R315-261-1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section R315-261-1060 is exempt from the requirements of Subsection R315-261-1054(a) and (b).

**R315-261-1055. Air Emission Standards: Sampling Connection Systems.**

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in Subsection R315-261-1055(a) shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of Sections R315-261-1084 through 1086 or a control device that complies with the requirements of Section R315-261-1060.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of Subsections R315-261-1055(a) and (b).

**R315-261-1056. Air Emission Standards: Open-Ended Valves or Lines.**

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with Subsection R315-261-1056(a) at all other times.

**R315-261-1057. Air Emission Standards: Valves in Gas/Vapor Service or in Light Liquid Service.**

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Subsection R315-261-1063(b) and shall comply with Subsections R315-261-1057(b) through (e), except as provided in Subsections R315-261-1057(f), (g), and (h) and Sections R315-261-1061 and 1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon

as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

- (1) Tightening of bonnet bolts.
- (2) Replacement of bonnet bolts.
- (3) Tightening of packing gland nuts.
- (4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Subsection R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsection R315-261-1057(a) if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in Subsection R315-261-1063(c).

(3) Is tested for compliance with Subsection R315-261-1057(f)(2) initially upon designation, annually, and at other times as requested by the Director.

(g) Any valve that is designated, as described in Subsection R315-261-1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1057(a).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in Subsection R315-261-1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before the effective date of Rule R315-261.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

**R315-261-1058. Air Emission Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.**

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in subsection R315-261-1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to,

the best practices described under Subsection R315-261-1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined, e.g., porcelain, glass, or glass-lined, is exempt from the monitoring requirements of Subsection R315-261-1058(a) and from the recordkeeping requirements of Section R315-261-1064.

**R315-261-1059. Air Emission Standards: Delay of Repair.**

(a) Delay of repair of equipment for which leaks have been detected shall be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected shall be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves shall be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section R315-261-1060.

(d) Delay of repair for pumps shall be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown shall be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

**R315-261-1060. Air Emission Standards: Closed-Vent Systems and Control Devices.**

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to Sections R315-261-1050 through 1064 shall comply with the provisions of Section R315-261-1033.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-261-1050 through 1064 on the effective date that the facility becomes subject to the provisions of Sections R315-261-1050 through 1064 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-261-1050 through 1064 for installation and startup.

(2) Any unit that begins operation after the effective date of rule R315-261 and is subject to the provisions of Sections

R315-261-1050 through 1064 when operation begins, shall comply with the rules immediately, i.e., shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-261-1050 through 1064 shall comply with all requirements of Sections R315-261-1050 through 1064 as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by Sections R315-261-1050 through 1064 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-261-1050 through 1064. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of Sections R315-261-1050 through 1064 after the effective date of Rule R315-261, due to an action other than those described in Subsection R315-261-1060(b)(3) shall comply with all applicable requirements immediately, i.e., shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-261-1050 through 1064; the 30-month implementation schedule does not apply.

**R315-261-1061. Air Emission Standards for Equipment Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.**

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in Subsection R315-261-1061(c) shall be conducted initially upon designation, annually, and at other times requested by the Director.

(2) If a valve leak is detected, it shall be repaired in accordance with Subsections R315-261-1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit shall be monitored within 1 week by the methods specified in Subsection R315-261-1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section R315-261-1057 for which leaks are detected by the total number of valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit.

**R315-261-1062. Air Emission Standards for Equipment**

**Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.**

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in Subsections R315-261-1062(b)(2) and (3).

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in Section R315-261-1057, except as described in Subsections R315-261-1062(b)(2) and (3).

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods, i.e., monitor for leaks once every six months, for the valves subject to the requirements in Section R315-261-1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods, i.e., monitor for leaks once every year, for the valves subject to the requirements in Section R315-261-1057.

(4) If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in Section R315-261-1057, but may again elect to use Section R315-261-1062 after meeting the requirements of Subsection R315-261-1057(c)(1).

**R315-261-1063. Air Emission Standards for Equipment Leaks - Test Methods and Procedures.**

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the test methods and procedures requirements provided in Section R315-261-1063.

(b) Leak detection monitoring, as required in Sections R315-261-1052 through 1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Sections R315-261-1054, the test shall comply with the following requirements:

(1) The requirements of Subsections R315-261-1063(b)(1) through (4) shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all

potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85, incorporated by reference under Section R315-260-11;

(2) Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in Subsection R315-261-1063(d)(1) or (2).

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in Subsection R315-261-1063(d)(1) or (2) can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86, incorporated by reference under Section R315-260-11.

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Subsections R315-261-1034(c)(1) through (4).

#### **R315-261-1064. Air Emission Standards for Equipment Leaks - Recordkeeping Requirements.**

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the recordkeeping requirements of Section R315-261-1064.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1050 through 1064 may comply with the recordkeeping requirements for these hazardous secondary

material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material shall record and keep the following information at the facility:

(1) For each piece of equipment to which Sections R315-261-1050 through 1064 applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility, e.g., identify the hazardous secondary material management unit on a facility plot plan.

(iii) Type of equipment, e.g., a pump or pipeline valve.

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment, e.g., gas/vapor or liquid.

(vi) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals".

(2) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule as specified in Subsection R315-261-1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-261-1035(b)(3).

(4) Documentation of compliance with Section R315-261-1060, including the detailed design documentation or performance test results specified in Subsection R315-261-1035(b)(4).

(c) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Subsection R315-261-1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in Subsection R315-261-1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with Subsection R315-261-1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material, or designate, whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section R315-261-1060 shall be recorded and kept up-to-date at the facility as specified in Subsection R315-261-1035(c). Design documentation is specified in Subsections R315-261-1035(c)(1) and (2) and monitoring, operating, and inspection information in Subsections R315-261-1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in Sections R315-261-1052 through 1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment, except welded fittings, subject to the requirements of Sections R315-261-1050 through 1064.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Subsections R315-261-1052(e), 1053(i), and 1057(f).

(ii) The designation of this equipment as subject to the requirements of Subsection R315-261-1052(e), 1053(i), or 1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with Subsection R315-261-1054(a).

(4)(i) The dates of each compliance test required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Section R315-261-1054.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location, area or group, of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Subsections R315-261-1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with Section R315-261-1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at the facility:

(1) Criteria required in Subsections R315-261-1052(d)(5)(ii) and 1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of Sections R315-261-1050 and other Sections of Rule R315-261:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in Sections R315-261-1052 through 1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections R315-261-1052 through 1060. The record shall include supporting documentation as required by Subsection R315-261-1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., changing the process that produced the material, that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in Sections R315-261-1052 through 1060, then a new determination is required.

(l) Records of the equipment leak information required by Subsection R315-261-1064(d) and the operating information required by Subsection R315-261-1064(e) need be kept only three years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to Sections R315-261-1050 through 1064 and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with Sections R315-261-1050 through 1064 either by documentation pursuant to Section R315-261-1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

#### **R315-261-1080. Air Emission Standards for Tanks and Containers - Applicability.**

(a) The regulations in Sections R315-261-1080 through 1089 apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

#### **R315-261-1081. Air Emission Standards for Tanks and Containers - Definitions.**

(a) As used in Sections R315-261-1080 through 1089, all terms not defined herein shall have the meaning given to them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Average volatile organic concentration or average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as

determined in accordance with the requirements of Section R315-261-1084.

(2) "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover; e.g., a sampling port cap; manually operated, e.g., a hinged access lid or hatch; or automatically operated, e.g., a spring-loaded pressure relief valve.

(3) "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

(4) "Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings, such as access hatches, sampling ports, gauge wells, that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

(5) "Empty hazardous secondary material container" means:

(a) A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and no more than 2.5 centimeters, one inch, of residue remain on the bottom of the container or inner liner;

(b) A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

(c) A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

(6) "Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

(7) "External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

(8) "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

(9) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

(10) "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

(11) "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

(12) "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 degrees C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 degrees C is equal to or greater than 20 percent by weight.

(13) "Internal floating roof" means a cover that rests or

floats on the material surface, but not necessarily in complete contact with it, inside a tank that has a fixed roof.

(14) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

(15) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(16) "Material determination" means performing all applicable procedures in accordance with the requirements of Section R315-261-1084 to determine whether a hazardous secondary material meets standards specified in Sections R315-261-1080 through 1089. Examples of a material determination include performing the procedures in accordance with the requirements of Section R315-261-1084 to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

(17) "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions, i.e., temperature, agitation, pH effects of combining materials, etc., reasonably expected to occur in the tank. For the purpose of Sections R315-261-1080 through 1089, maximum organic vapor pressure is determined using the procedures specified in Subsection R315-261-1084(c).

(18) "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric, envelope, spans the annular space between the metal sheet and the floating roof.

(19) "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in Subsection R315-261-1084(d).

(20) "Point of material origination" means as follows:

(a) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under Subsection R315-261-4(a)(27).

Note to paragraph (a) of the definition of "Point of material origination": "In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

(b) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

(21) "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical



damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of Sections R315-261-1080 through 1089, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(22) "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

(23) "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

(24) "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of Section R315-261-1084. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X), which can also be expressed as  $1.8 \times 10^6$  atmospheres/gram-mole/m<sup>3</sup>, at 25 deg. Celsius shall be included.

#### **R315-261-1082. Air Emission Standards for Tanks and Containers - Standards: General.**

(a) Section R315-261-1082 applies to the management of hazardous secondary material in tanks and containers subject to Sections R315-261-1080 through 1089.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit, except as provided for in Subsection R315-261-1082(c).

(c) A tank or container is exempt from standards specified in Sections R315-261-1084 through 1087, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in Subsection R315-261-1083(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

#### **R315-261-1083. Air Emission Standards for Tanks and Containers - Material Determination Procedures.**

(a) Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary

material at the point of material origination.

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section R315-261-1082.

(2) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by Subsection R315-261-1083(a)(1), the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in Subsection R315-261-1083(a)(3) or by knowledge as specified in Subsection R315-261-1083(a)(4).

(3) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under Subsection R315-261-1083(a)(3)(ii)(C), shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>, at 25 deg. Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 deg. Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment shall be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in Subsection R315-261-1083(a)(3)(iii)(A) or (B) and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X, which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>, at 25 deg. Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations.

(A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with Subsections R315-

261-1083(a)(3)(ii) and (iii) and the following equation:

The equation found in 40 CFR 261.1083(a)(3)(iv)(A), 2015 ed. is adopted and incorporated by reference.

Where:

C = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination "i" of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q<sub>i</sub> = Mass quantity of hazardous secondary material stream represented by C<sub>i</sub>, kg/hr.

Q<sub>T</sub> = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C<sub>i</sub> = Measured VO concentration of material determination "i" as determined in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii), i.e., the average of the four or more samples specified in Subsection R315-261-1083(a)(3)(ii)(B), ppmw.

(B) For the purpose of determining C<sub>i</sub> for individual material samples analyzed in accordance with Subsection R315-261-1083(a)(3)(iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(I) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(II) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>, at 25 degrees Celsius.

(4) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-

specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ).

(iv) In the event that the Director and the remanufacturer or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in Subsection R315-261-1083(a)(3) shall be used to establish compliance with the applicable requirements of Sections R315-261-1080 through 1089. The Director may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii).

(b) Reserved

(c) Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in Subsection R315-261-1084(c).

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in Subsection R315-261-1083(c)(3) or knowledge of the waste as specified by Subsection R315-261-1083(c)(4) to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," incorporated by reference - refer to Section R315-260-11;

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92, incorporated by reference - refer to Section R315-260-11; and

(E) Any other method approved by the Director.

(4) Use of knowledge to determine the maximum organic

vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in Subsection R315-261-1085(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with Sections R315-261-1080 through 1089:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air, less than 10 ppmv hydrocarbon in air, and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn, e.g., some pressure relief devices, the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in Subsection R315-261-1083(d)(9). If the

difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

**R315-261-1084. Air Emission Standards for Tanks and Containers - Standards: Tanks.**

(a) The provisions of Section R315-261-1084 apply to the control of air pollutant emissions from tanks for which Subsection R315-261-1082(b) references the use of Section R315-261-1084 for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to Section R315-261-1084 in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in Subsection R315-261-1084(c) or the Tank Level 2 controls specified in Subsection R315-261-1084(d).

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m<sup>3</sup>, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m<sup>3</sup> but less than 151 m<sup>3</sup>, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m<sup>3</sup>, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with Subsection R315-261-1084(b)(1)(i).

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of Subsection R315-261-1084(d). An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in Subsection R315-261-1084(b)(1)(i).

(c) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in Subsection R315-261-1084(c)(1) through (4):

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first

time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in Subsection R315-261-1083(c). Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in Subsection R315-261-1084(b)(1)(i), as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank, e.g., a removable cover mounted on an open-top tank, or may be an integral part of the tank structural design, e.g., a horizontal cylindrical tank equipped with a hatch.

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in Subsection R315-261-1084(c)(2)(iii)(B)(I) and (II).

(I) During periods when it is necessary to provide access to the tank for performing the activities of Subsection R315-261-1084(c)(2)(iii)(B)(II), venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(II) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine

inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in Subsection R315-261-1084(l).

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in Subsection R315-261-1084(e);

(2) A tank equipped with an external floating roof in accordance with the requirements specified in Subsection R315-261-1084(f);

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-261-1084(g);

(4) A pressure tank designed and operated in accordance with the requirements specified in Subsection R315-261-1084(h); or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in Subsection R315-261-1084(i).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in Subsections R315-261-1084(e)(1) through (3).

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents, vacuum breaker vents, and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed, i.e., no visible gaps. Rim space vents are to be set to open only when the internal floating

roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in Subsection R315-261-1084(e)(3)(iii):

(A) Visually inspect the internal floating roof components through openings on the fixed-roof, e.g., manholes and roof hatches, at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in Subsection R315-261-1084(e)(3)(ii) for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every five years.

(iv) Prior to each inspection required by Subsection R315-261-1084(e)(3)(ii) or (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-261-1084(e)(3)(iv)(B).

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in

accordance with the requirements of Subsection R315-261-1084(k).

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(e).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in Subsections R315-261-1084(f)(1) through (3).

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters. If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters.

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents, vacuum breaker vents, and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device shall be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well shall be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of Subsections R315-261-1084(f)(3)(i)(A) and (B).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(I) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(II) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter diameter uniform probe passes freely, without forcing or binding against the seal, between the seal and the wall of the tank and measure the circumferential distance of each such location.

(III) For a seal gap measured under Subsection R315-261-

1084(f)(3), the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(IV) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection R315-261-1084(f)(1)(ii).

(E) In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1)(ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(iii) Prior to each inspection required by Subsection R315-261-1084(f)(3)(i) or (ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under Subsection R315-261-1084(f)(3)(i), written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-261-1084(f)(3)(iii)(C).

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(f).

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in Subsections R315-261-1084(g)(1) through (3).

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is

allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Section R315-261-1087.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(iv) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Subsection R315-261-1083(d).

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in Subsection R315-261-1084(h)(3)(i) or (h)(3)(ii).

(i) At those times when opening of a safety device, as defined in Section R315-261-1081, is required to avoid an unsafe condition.



(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section R315-261-1087.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in Subsections R315-261-1084(i)(1) through (4).

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of Subsections R315-261-1084(i)(1) and (2).

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in Section R315-261-1087.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to Section R315-261-1084 in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in Subsection R315-261-1084(j)(2), to the tank from another tank subject to Section R315-261-1084 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR - National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-261-1084(j)(1) do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in Subsection R315-261-1082(c)(1) at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-261-1082(c)(2).

(iii) The hazardous secondary material meets the requirements of Subsection R315-261-1082(c)(4).

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of Subsection R315-261-1084(c)(4), (e)(3), (f)(3), or (g)(3) as follows:

(1) The remanufacturer or other person that stores or treats

the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-261-1084(k)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-261-1080 through 1089, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of Sections R315-261-1080 through 1089, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of Section R315-261-1084, only those portions of the tank cover and those connections to the tank, e.g., fill ports, access hatches, gauge wells, etc., that are located on or above the ground surface.

#### **R315-261-1086. Air Emission Standards for Tanks and Containers - Standards: Containers.**

(a) Applicability. The provisions of Section R315-261-1086 apply to the control of air pollutant emissions from containers for which Subsection R315-261-1082(b) references the use Section R315-261-1086 for such air emission control.

(b) General requirements.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to Section R315-261-1086 in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 m<sup>3</sup> and less than or equal to 0.46 m<sup>3</sup>, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(ii) For a container having a design capacity greater than 0.46 m<sup>3</sup> that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(iii) For a container having a design capacity greater than

0.46 m<sup>3</sup> that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-261-1086(d).

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, e.g., a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsection R315-261-1086(c)(1)(ii) or (iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the

purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices on such a container are not required to be secured in the closed position.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover

and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(c)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m<sup>3</sup> or greater, which do not meet applicable U.S. Department of Transportation regulations as specified in Subsection R315-261-1086(f), are not managing hazardous secondary material in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container that operates with no detectable organic emissions as defined in Section R315-261-1081 and determined in accordance with the procedure specified in Subsection R315-261-1086(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-261-1086(h).

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(d) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the

container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable,

explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(d)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-261-1086(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-261-1086(e)(2)(i) and (ii).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a

Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-261-1086(e)(1).

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall inspect and monitor the closed-vent systems and control devices as specified in Section R315-261-1087.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall prepare and maintain the records specified in Subsection R315-261-1089(d).

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(e) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsection R315-261-1086(c)(1)(i) or (d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

(3) For the purpose of complying with Sections R315-261-1080 through 1089, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of Subsection R315-261-1086(d)(1)(ii), the procedure specified in Subsection R315-261-1083(d) shall be used.

(1) Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any

opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-261-1086(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A.

(2) A pressure measurement device shall be used that has a precision of +/- 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

**R315-261-1087. Air Emission Standards for Tanks and Containers - Standards: Closed-Vent Systems and Control Devices.**

(a) Section R315-261-1087 applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of Sections R315-261-1080 through 1089.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in Subsection R315-261-1087(c).

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in Subsection R315-261-1033(k).

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in Subsection R315-261-1087(b)(3)(i) or a seal or locking device as specified in Subsection R315-261-1087(b)(3)(ii). For the purpose of complying with Subsection R315-261-1087(b)(3), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with Subsection R315-261-1087(b)(3), the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For Subsection R315-261-1087(b), a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with Subsection R315-261-1087(b)(3), the device shall be placed on the mechanism by which the bypass device position is controlled, e.g., valve handle, damper lever, when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The

remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in Subsection R315-261-1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of Subsection R315-261-1033(c); or

(iii) A flare designed and operated in accordance with the requirements of Subsection R315-261-1033(d).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements specified in Subsections R315-261-1087(c)(2)(i) through (vi).

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of Subsection R315-261-1087(c)(2)(i), i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year, by recording the information specified in Subsection R315-261-1089(e)(1)(v).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction, i.e., periods when the control device is not operating or not operating normally, except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Subsection R315-261-1033(g) or (h).

(ii) All carbon that is hazardous waste and that is removed

from the control device shall be managed in accordance with the requirements of Subsection R315-261-1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the requirements of Subsection R315-261-1033(j).

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of Subsection R315-261-1087(c)(1) as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in Subsection R315-261-1087(c)(5)(iii) or a design analysis as specified in Subsection R315-261-1087(c)(5)(iv) the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in Subsection R315-261-1033(e).

(iii) For a performance test conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in Subsections R315-261-1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the design analysis shall meet the requirements specified in Subsection R315-261-1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of Subsection R315-261-1087(c)(1) based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of Subsection R315-261-1087(c)(5)(iii). The Director may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Subsections R315-261-1033(f)(2) and (l). The readings from each monitoring device required by Subsection R315-261-1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements Section R315-261-1087.

#### **R315-261-1088. Air Emission Standards for Tanks and Containers - Inspection and Monitoring Requirements.**

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with Sections R315-261-1080 through 1089 in accordance with the applicable requirements specified in Sections R315-261-1084 through 1087.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by Subsection R315-261-1088(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

#### **R315-261-1089. Air Emission Standards for Tanks and Containers - Recordkeeping Requirements.**

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of Sections R315-261-1080 through 1089 shall record and maintain the information specified in Subsections R315-261-1089(b) through (j), as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections R315-261-1089(i) and (j), records required by Section R315-261-1089 shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections R315-261-1089(i) and (j) shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in Sections R315-261-1084 through 1087 in accordance with the conditions specified in Subsection R315-261-1080(b)(7) or (d), respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of Section R315-261-1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by Section R315-261-1084 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by Subsection R315-261-1089(b)(1), the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in Subsection R315-261-1084(c) shall prepare and maintain records for each determination for the maximum organic vapor

pressure of the hazardous secondary material in the tank performed in accordance with the requirements of Subsection R315-261-1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by Subsection R315-261-1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(c) Reserved

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of Subsection R315-261-1086 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of Subsection R315-261-1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a

design analysis as specified in Subsection R315-261-1089(e)(1)(ii) or by performance tests as specified in Subsection R315-261-1089(e)(1)(iii) when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in Subsection R315-261-1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsection R315-261-1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in Subsection R315-261-1035(b)(3) and all test results.

(iv) Information as required by Subsections R315-261-1035(c)(1) and 261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in Subsections R315-261-1089(e)(1)(v)(A) and (B) for those planned routine maintenance operations that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in Subsections R315-261-1089(e)(1)(vi)(A) through (C) for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Subsection R315-261-1087(c)(3)(ii).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in Subsections R315-261-1082(c)(1) or (c)(2)(i) through (vi), shall prepare and maintain at the facility records documenting the information used for each material determination, e.g., test results, measurements, calculations, and other documentation. If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the

hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of Section R315-261-1083.

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to Subsection R315-261-1084(1) or Subsection R315-261-1085(g) shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to Sections R315-261-1080 through 1089 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of Sections R315-261-1080 through 1089 by documentation either pursuant to Sections R315-261-1080 through 1089, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by Section R315-261-1089.

**R315-261-1090. Appendix I to Rule R315-261 -- Representative Sampling Methods.**

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, shall be considered by the Agency to be representative of the waste.

Extremely viscous liquid-ASTM Standard D140-70  
Crushed or powdered material-ASTM Standard D346-75  
Soil or rock-like material-ASTM Standard D420-69  
Soil-like material-ASTM Standard D1452-65

Fly Ash-like material-ASTM Standard D2234-76, ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103

Containerized liquid waste-"COLIWASA."

Liquid waste in pits, ponds, lagoons, and similar reservoirs-"Pond Sampler."

This manual also contains additional information on application of these protocols.

**R315-261-1091. Appendix VII to Rule R315-261-Basis for Listing Hazardous Waste.**

TABLE

EPA hazardous waste No.	Hazardous constituents for which listed
F001	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).

F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodi-benzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta- and hexachlorodibenzo-p- dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetra-chloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under Section R315-268-43, Table CCW.
F999	CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote,



	chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.	K069 K071 K073	Hexavalent chromium, lead, cadmium. Mercury. Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K002	Hexavalent chromium, lead		
K003	Hexavalent chromium, lead.		
K004	Hexavalent chromium.	K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K005	Hexavalent chromium, lead.		
K006	Hexavalent chromium.	K084	Arsenic.
K007	Cyanide (complexed), hexavalent chromium.	K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K008	Hexavalent chromium.		
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.	K086	Lead, hexavalent chromium.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.	K087 K088 K093	Phenol, naphthalene. Cyanide (complexes). Phthalic anhydride, maleic anhydride.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.	K094	Phthalic anhydride.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.	K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K014	Acetonitrile, acrylamide.		
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.	K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.	K097 K098 K099	Chlordane, heptachlor. Toxaphene. 2,4-dichlorophenol, 2,4,6-trichlorophenol.
K017	Epichlorohydrin, chloroethers (bis(chloromethyl) ether and bis (2-chloroethyl) ethers), trichloropropane, dichloropropanols.	K100 K101 K102	Hexavalent chromium, lead, cadmium. Arsenic. Arsenic.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.	K103 K104	Aniline, nitrobenzene, phenylenediamine. Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.	K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.	K106 K107 K108 K109 K110 K111 K112	Mercury. 1,1-Dimethylhydrazine (UDMH). 1,1-Dimethylhydrazine (UDMH). 1,1-Dimethylhydrazine (UDMH). 1,1-Dimethylhydrazine (UDMH). 2,4-Dinitrotoluene. 2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K021	Antimony, carbon tetrachloride, chloroform.	K113	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).	K114	2,4-Toluenediamine, o-toluidine, p-toluidine.
K023	Phthalic anhydride, maleic anhydride.	K115	2,4-Toluenediamine.
K024	Phthalic anhydride, 1,4-naphthoquinone.	K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.		
K026	Paraldehyde, pyridines, 2-picoline.	K117	Ethylene dibromide.
K027	Toluene diisocyanate, toluene-2, 4-diamine.	K118	Ethylene dibromide.
K028	1,1,1-trichloroethane, vinyl chloride.	K123	Ethylene thiourea.
K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.	K124 K125 K126	Ethylene thiourea. Ethylene thiourea. Ethylene thiourea.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.	K131 K132 K136 K141	Dimethyl sulfate, methyl bromide. Methyl bromide. Ethylene dibromide.
K031	Arsenic.		
K032	Hexachlorocyclopentadiene.		
K033	Hexachlorocyclopentadiene.		
K034	Hexachlorocyclopentadiene.		
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.	K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K036	Toluene, phosphorodithioic and phosphorothioic acid esters.	K143	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.	K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.	K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K039	Phosphorodithioic and phosphorothioic acid esters.	K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.	K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K041	Toxaphene.		
K042	Hexachlorobenzene, ortho-dichlorobenzene.		
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.	K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K044	N.A.		
K045	N.A.		
K046	Lead.		
K047	N.A.		
K048	Hexavalent chromium, lead.	K150	Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K049	Hexavalent chromium, lead.		
K050	Hexavalent chromium.		
K051	Hexavalent chromium, lead.		
K052	Lead.	K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.		
K061	Hexavalent chromium, lead, cadmium.	K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride,
K062	Hexavalent chromium, lead.		

K157	triethylamine. Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

N.A.-Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

#### **R315-261-1092. Appendix VIII to Rule 315-261-Hazardous Constituents.**

Appendix VIII to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference, with the following addition:

(a) P999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

#### **R315-261-1093. Appendix IX to Rule 315-261-Hazardous Constituents.**

Appendix IX to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference

**KEY: hazardous waste  
April 15, 2019**

**19-6-105  
19-6-106**

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-262. Hazardous Waste Generator Requirements.**

**R315-262-1. General -- Terms Used in this Part.**

(a) As used in Rule R315-262:

(1) "Condition for exemption" means any requirement in Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, R315-262-70, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233 that states an event, action, or standard that shall occur or be met in order to obtain an exemption from any applicable requirement in Rule R315-124, R315-264 through R315-268, and R315-270, or from any requirement for notification under section 3010 of RCRA.

(2) "Independent requirement" means a requirement of Rule R315-262 that states an event, action, or standard that shall occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under Sections R315-262-14, R315-262-15, R315-262-16, R315-262-17, or Sections R315-262-200 through R315-262-216 or Sections R315-262-230 through R315-262-233.

**R315-262-10. General -- Purpose, Scope, and Applicability.**

(a) The regulations in Rule R315-262 establish standards for generators of hazardous waste as defined by Section R315-260-10.

(1) A person who generates a hazardous waste as defined by Rule R315-261 is subject to all the applicable independent requirements in the sections listed below:

(i) Independent requirements of a very small quantity generator.

(A) Subsections R315-262-11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section R315-262-13 Generator category determination.

(ii) Independent requirements of a small quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Section R315-262-40 Recordkeeping;

(G) Section R315-262-44 Recordkeeping for small quantity generators; and

(H) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.

(iii) Independent requirements of a large quantity generator.

(A) Section R315-262-11 Hazardous waste determination and recordkeeping;

(B) Section R315-262-13 Generator category determination;

(C) Section R315-262-18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D) Sections R315-262-20 through R315-262-27--Manifest requirements applicable to small and large quantity

generators;

(E) Sections R315-262-30 through R315-262-34--Pre-transport requirements applicable to small and large quantity generators;

(F) Sections R315-262-40 through R315-262-44--Recordkeeping and reporting applicable to small and large quantity generators, except Section R315-262-44; and

(G) Sections R315-262-80 through R315-262-89--Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Rule R315-124, R315-264 through R315-266, R315-270 and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in Section R315-262-14;

(ii) A small quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-16; or

(iii) A large quantity generator that meets the conditions for exemption in Sections R315-262-15 and R315-262-17.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in Section R315-260-10, or not otherwise authorized to receive the generator's hazardous waste.

(b) Determining generator category. A generator shall use Section R315-262-13 to determine which provisions of Rule R315-262 are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) Reserved.

(d) Any person who exports or imports hazardous wastes shall comply with Section R315-262-18 and Sections R315-262-80 through R315-262-89.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315-270, 264, 265, or 268 with respect to such pesticides.

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(2) A generator's noncompliance with a condition for exemption in Rule R315-262 is not subject to penalty or injunctive relief under Sections 19-6-112 and 19-6-113 as a violation of a Rule R315-262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Rules R315-124, R315-264 through R315-266, and R315-270, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Sections 19-6-112 and 19-6-113.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable

standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

- (i) Reserved.
- (j) Reserved.
- (k) Reserved.

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through R315-262-216 are not subject to, for purposes of Subsection R315-262-10(l), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200:

(1) The independent requirements of Section R315-262-11 or the regulations in Section R315-262-15 for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through R315-262-216, and

(2) The conditions of Section R315-262-14, for very small quantity generators, except as provided in Sections R315-262-200 through R315-262-216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, R315-265, R315-266, R315-268, and R315-270.

### **R315-262-11. General -- Hazardous Waste Determination and Recordkeeping.**

A person who generates a solid waste, as defined in Section R315-261-2, shall make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable regulations. A hazardous waste determination is made using the following steps:

(a) The hazardous waste determination for each solid waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous classification of the waste may change.

(b) A person shall determine whether the solid waste is excluded from regulation under Section R315-261-4.

(c) If the waste is not excluded under Section R315-261-4, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Sections R315-261-30 through R315-261-35. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under Sections R315-260-20 and R315-260-22 to demonstrate to the Director that the waste from this particular site or operation is not a hazardous waste.

(d) The person then shall also determine whether the waste exhibits one or more hazardous characteristics as identified in Sections R315-261-20 through R315-261-24 by following the procedures in Subsections R315-262-11(d)(1) or (2), or a combination of both.

(1) The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge, for example, information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates

produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Sections R315-261-20 through R315-261-24, or an equivalent test method approved by the Director under Section R315-260-21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(2) When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the applicable methods set forth in Sections R315-261-20 through R315-261-24 or according to an equivalent method approved by the Director under Section R315-260-21 and in accordance with the following:

(i) Persons testing their waste shall obtain a representative sample of the waste for the testing, as defined at Section R315-260-10.

(ii) Where a test method is specified in Sections R315-261-20 through R315-261-24, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator shall refer to Rules R315-261, R315-264, R315-265, R315-266, R315-268, and R315-273 for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) Recordkeeping for small and large quantity generators. A small or large quantity generator shall maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by Section R315-261-3. Records shall be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and support the generator's determination, as described at Subsections R315-262-11(c) and (d). The records shall include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at Subsection R315-262-11(d)(1). The periods of record retention referred to in Subsection R315-262-11(2)(f) are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers, EPA hazardous waste codes, in Sections R315-261-20 through R315-261-24 and R315-261-30 through R315-261-35. Prior to shipping the waste off site, the generator also shall mark its containers with all applicable EPA hazardous waste numbers, EPA hazardous waste codes, according to Section R315-262-32.

### **R315-262-13. General -- Generator Category Determination.**

A generator shall determine its generator category. A

generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in Section R315-260-10.

(a) Generators of either acute hazardous waste or non-acute hazardous waste. A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d); and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 below.

(b) Generators of both acute and non-acute hazardous wastes. A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in Subsections R315-262-13(c) and (d);

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 below; and

(4) Comparing the resulting generator categories from Subsection R315-262-13(b)(3) and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 to Section R315-262-13

Generator Categories Based on Quantity of Waste Generated in a Calendar Month			
Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
>1kg	Any amount	Any amount	Large quantity generator
Any amount	> or = 1,000kg	Any amount	Large quantity generator
Any amount	Any Amount	>100kg	Large quantity generator
< or = 1 kg	>100 kg and < 1,000 kg	< or = 100 kg	Small quantity Generator
< or = 1 kg	< or = 100 kg	< or = 100 kg	Very small quantity generator

(c) When making the monthly quantity-based determinations required by Rule R315-262, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), 261-6(a)(3), R315-261-7(a)(1), or Section R315-261-8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(c)(2);

(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and R315-15;

(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80;

(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;

(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200; or

(8) Is managed as part of an episodic event in compliance with the conditions of Sections R315-262-230 through R315-262-233.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under Section R315-262-13, the generator shall meet the applicable independent requirements listed in Section R315-262-10. A generator's category also determines which of the provisions of Sections R315-262-14, R315-262-15, R315-262-16 or R315-262-17 shall be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) Mixing hazardous wastes with solid wastes

(1) Very small quantity generator wastes.

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to Section R315-262-14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at Section R315-260-10, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in Sections R315-261-20 through R315-261-24.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator shall meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator shall also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending,

or other treatment is also regulated under Rule R315-15.

(2) Small quantity generator and large quantity generator wastes.

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in Subsections R315-261-3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at Subsection R315-268-3(a); the land disposal restriction requirements of Section R315-268-40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at Section R315-262-11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in Section R315-260-10. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator shall meet the conditions for exemption applicable to a large quantity generator. The small quantity generator shall also comply with the applicable independent requirements for a large quantity generator.

**R315-262-14. General -- Conditions For Exemption for a Very Small Quantity Generator.**

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in Section R315-262-14, hazardous waste generated by the very small quantity generator is not subject to the requirements of Rules R315-124, 262 (except Sections R315-262-10 through R315-262-14) through R315-268, and R315-270, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in Section R315-260-10;

(2) The very small quantity generator complies with Subsections R315-262-11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in Subsection R315-262-14(a)(3); and

(ii) The conditions for exemption in Subsections R315-262-17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in Subsection R315-262-14(a)(4);

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in Subsections R315-

262-16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Subsections R315-262-14(a)(3) and (4) shall either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-265 and 270;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through R315-320;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in Rules R315-301 through R315-320 or 40 CFR 257.5 through 257.30;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in Section R315-260-10. "Control," for the purposes of Subsection R315-262-14(a)(5)(viii), means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste" and

(2) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(ix) Reserved

(x) Reserved

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of Subsection R315-261-4(j).

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Sections R315-262-230 through 233 in lieu of Sections R315-262-15, 16, and 17.

**R315-262-15. General -- Satellite Accumulation Area Regulations for Small and Large Quantity Generators.**

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) or 1 kg (2.2 lbs) of solid acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, provided that all of the conditions for exemption in Section R315-262-15 are met. A generator may comply with the conditions for exemption in Section R315-262-15 instead of complying with the conditions for exemption in Subsection R315-262-16(b) or 17(a), except as required in Subsections R315-262-15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with Subsections R315-262-16(b) or 17(a).

(2) The generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(ii) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers shall be separated from the other materials or protected from them by any practical means.

(4) A container holding hazardous waste shall be closed at all times during accumulation, except:

- (i) When adding, removing, or consolidating waste; or
- (ii) When temporary venting of a container is necessary:
  - (A) For the proper operation of equipment, or
  - (B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator shall mark or label its container with the following:

- (i) The words "Hazardous Waste" and
- (ii) An indication of the hazards of the contents, examples include, but are not limited to:
  - (A) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;
  - (B) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;
  - (C) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or
  - (D) a chemical hazard label consistent with the National Fire Protection Association code 704.

(6) A generator who accumulates either acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-

33(e) or non-acute hazardous waste in excess of the amounts listed in Subsection R315-262-15(a) at or near any point of generation shall do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in Subsection R315-262-16(b) or 17(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either:

(A) A central accumulation area operated in accordance with the applicable regulations in Subsection R315-262-16(b) or 17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator shall continue to comply with Subsections R315-262-15(a)(1) through (5). The generator shall mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(7) All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of Subsection R315-262-16(b)(8) and emergency procedures at Subsection R315-262-16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator shall meet the Preparedness, Prevention and Emergency Procedures in Sections R315-262-250 through R315-262-265.

(b) Reserved.

**R315-262-16. General -- Conditions for Exemption for a Small Quantity Generator that Accumulates Hazardous Waste.**

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all the conditions for exemption listed in Section R315-262-16 are met:

(a) Generation. The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in Section R315-260-10.

(b) Accumulation. The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in Subsections R315-262-16(d) and (e). The following accumulation conditions also apply:

(1) Accumulation limit. The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) Accumulation of hazardous waste in containers.

(i) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of Section R315-262-16.

(ii) Compatibility of waste with container. The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) Inspections. At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-16(b)(2)(i) for remedial action required if deterioration or leaks are detected.

(v) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of 40 CFR 265 for examples) shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of 40 CFR 265 for examples), unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) Accumulation of hazardous waste in tanks.

(i) Reserved.

(ii) A small quantity generator of hazardous waste shall comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks shall comply with 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1.

(B) Hazardous wastes or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in Subsection R315-262-16(b)(3)(iv), a small quantity generator that accumulates hazardous waste in tanks shall inspect, where present:

(A) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with Subsection R315-262-16(b)(3)(ii)(C);

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(iv) A small quantity generator accumulating hazardous

waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly, where applicable, the areas identified in Subsections R315-262-16(b)(3)(iii)(A) through (E). Use of the alternate inspection schedule shall be documented in the generator's operating record. This documentation shall include a description of the established workplace practices at the generator.

(v) Reserved.

(vi) A small quantity generator accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with Subsection R315-261-3(c) or (d), that any solid waste removed from its tank is not a hazardous waste, then it shall manage such waste in accordance with all applicable provisions of Rules R315-262, R315-263, R315-265, and R315-268.

(vii) A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste shall not be placed in a tank, unless:

(I) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section R315-261-21 or R315-261-23 and 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with; or

(II) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(III) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference, see Section R315-260-11.

(C) A small quantity generator shall comply with the following special conditions for incompatible wastes:

(I) Incompatible wastes, or incompatible wastes and materials, (see 40 CFR 265 appendix V for examples) shall not be placed in the same tank, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(II) Hazardous waste shall not be placed in an unwashed tank that previously held an incompatible waste or material, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(4) Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which is incorporated by reference in Section R315-265-1, except 265.445(c);

(ii) The small quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in Subsections R315-262-16(b) and Section R315-262-15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator shall maintain on site at the facility the following records readily available for



inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which is incorporated by reference in Section R315-265-1. The generator shall label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(6) Labeling and marking of containers and tanks.

(i) Containers. A small quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(7) Land disposal restrictions. A small quantity generator shall comply with all the applicable requirements under Rule R315-268.

(8) Preparedness and prevention.

(i) Maintenance and operation of facility. A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) Required equipment. All areas where hazardous waste is either generated or accumulated shall be equipped with the items in Subsections R315-262-16(b)(8)(ii)(A) through (D), unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(B) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) Testing and maintenance of equipment. All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv) Access to communications or alarm system.

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access, e.g., direct or unimpeded access, to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(B) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning

external emergency assistance, unless such a device is not required under Subsection R315-262-16(a)(8)(ii).

(v) Required aisle space. The small quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi) Arrangements with local authorities.

(A) The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(I) A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(II) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(III) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(C) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) Emergency procedures. The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-262-16(b)(9)(iv). This employee is the emergency coordinator.

(ii) The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless

the facility has a direct alarm.

(iii) The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and the state environmental incident reporting program at 801/536-0200 or after hours at 801/536-4123. The report shall include the following information:

(I) The name, address, and U.S. EPA identification number of the small quantity generator;

(II) Date, time, and type of incident, e.g., spill or fire;

(III) Quantity and type of hazardous waste involved in the incident;

(IV) Extent of injuries, if any; and

(V) Estimated quantity and disposition of recovered materials, if any.

(c) Transporting over 200 miles. A small quantity generator who shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of Subsection R315-262-16(b).

(d) Accumulation time limit extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of Rules R315-264, R315-265, R315-268, and R315-270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(e) Rejected load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Section R315-264-72 or 40 CFR 265.72, which is incorporated by reference in R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-16(a)-(d). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Sections R315-262-230 through R315-262-233 in lieu of

Section R315-262-17.

**R315-262-17. General -- Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste.**

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Rules R315-124, R315-264 through R315-266, and R315-270, or the notification requirements of section 3010 of RCRA, provided that all of the following conditions for exemption are met:

(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in Subsections R315-262-17(b) through (e). The following accumulation conditions also apply:

(1) Accumulation of hazardous waste in containers. If the hazardous waste is placed in containers, the large quantity generator shall comply with the following:

(i) Air emission standards. The applicable requirements of 40 CFR 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1;

(ii) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) Compatibility of waste with container. The large quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) Management of containers.

(A) A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) Inspections. At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subsection R315-262-17(a)(1)(ii) for remedial action required if deterioration or leaks are detected.

(vi) Special conditions for accumulation of ignitable and reactive wastes.

(A) Containers holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval shall be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is

a hazard from ignitable or reactive waste.

(vii) Special conditions for accumulation of incompatible wastes.

(A) Incompatible wastes, or incompatible wastes and materials, see appendix V of 40 CFR 265 for examples, shall not be placed in the same container, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(B) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see appendix V of 40 CFR 265 for examples, unless 40 CFR 265.17(b), which is incorporated by reference in Section R315-265-1, is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) Accumulation of hazardous waste in tanks. If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of 40 CFR 265.190 through 265.202, except 265.197(c) of Closure and post-closure care and 265.200, Waste analysis and trial tests, as well as the applicable requirements of 265.1030 through 265.1035, 265.1050 through 265.1064, and 265.1080 through 265.1090, which are incorporated by reference in Section R315-265-1.

(3) Accumulation of hazardous waste on drip pads. If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:

(i) 40 CFR 265.440 through 265.445, which are incorporated by reference in Section R315-265-1;

(ii) The large quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in Subsection R315-262-17(a) and Section R315-262-15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator shall maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1. The generator shall label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents, examples include, but are not limited to, the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic; hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding; a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704. The generator shall also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR

265.1101, which is incorporated by reference in Section R315-265-1. This certification shall be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(C) Inventory logs or records with the above information shall be maintained on site and readily available for inspection.

(5) Labeling and marking of containers and tanks.

(i) Containers. A large quantity generator shall mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) Tanks. A large quantity generator accumulating hazardous waste in tanks shall do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(6) Emergency procedures. The large quantity generator complies with the standards in Section R315-262-250 through R315-262-265, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) Personnel training.

(i)(A) Facility personnel shall successfully complete a program of classroom instruction, online training, e.g., computer-based or electronic, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described in the document required under Subsection R315-262-17(a)(7)(iv).

(B) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(C) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) Key parameters for automatic waste feed cut-off systems;

(III) Communications or alarm systems;

(IV) Response to fires or explosions;

(V) Response to ground-water contamination incidents; and

(VI) Shutdown of operations.

(D) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to Section R315-262-17, provided that the overall facility training meets all the conditions of exemption in Section R315-262-17.

(ii) Facility personnel shall successfully complete the program required in Subsection R315-262-17(a)(7)(i) within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees shall not work in unsupervised positions until they have completed the training standards of Subsection R315-262-17(a)(7)(i).

(iii) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-262-17(a)(7)(i).

(iv) The large quantity generator shall maintain the following documents and records at the facility:

(A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under Subsection R315-262-17(a)(7)(iv)(A). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Subsection R315-262-17(a)(7)(iv)(A);

(D) Records that document that the training or job experience, required under Subsections R315-262-17(a)(7)(i), (ii), and (iii), has been given to, and completed by, facility personnel.

(v) Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) Closure. A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:

(i) Notification for closure of a waste accumulation unit. A large quantity generator shall perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) for container, tank, and containment building waste accumulation units or Subsection R315-262-17(a)(8)(iv) for drip pads and notify the Director following the procedures in Subsection R315-262-17(a)(8)(ii)(B) for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) Notification for closure of the facility.

(A) Notify the Director using EPA form 8700-12 no later than 30 days prior to closing the facility.

(B) Notify the Director using EPA form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv). If the facility cannot meet the closure performance standards of Subsection R315-262-17(a)(8)(iii) or (iv), notify the Director using EPA form 8700-12 that it will close as a landfill under 40 CFR 265.310, which is incorporated by reference in Section R315-265-1, in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using EPA form 8700-12 that it will close under the standards of 40 CFR 265.445(b), which is incorporated by reference in Section R315-265-1.

(C) A large quantity generator may request additional time to clean close, but it shall notify the Director using EPA form 8700-12 within 75 days after the date provided in Subsection R315-262-17(a)(8)(ii)(A) to request an extension and provide an explanation as to why the additional time is required.

(iii) Closure performance standards for container, tank systems, and containment building waste accumulation units.

(A) At closure, the generator shall close the waste accumulation unit or facility in a manner that:

(I) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

(II) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless Subsection R315-261-3(d) applies.

(III) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste shall be managed in accordance with all applicable standards of Rules R315-262, R315-263, R315-265 and R315-268, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(IV) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in Subsection R315-262-17(a)(8)(ii)(A)(II), then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR 265.310, which is incorporated by reference in Section R315-265-1). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in 40 CFR 265.110 through 265.121 and

265.140 through 265.148, which are incorporated by reference in Section R315-265-1.

(iv) Closure performance standards for drip pad waste accumulation units. At closure, the generator shall comply with the closure requirements of Subsections R315-262-17(a)(8)(ii) and (a)(8)(iii)(A)(I) and (III), and 40 CFR 265.445(a) and (b), which are incorporated by reference in Section R315-265-1.

(v) The closure requirements of Subsection R315-262-17(a)(8) do not apply to satellite accumulation areas.

(9) Land disposal restrictions. The large quantity generator complies with all applicable requirements under Rule R315-268.

(b) Accumulation time limit extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270 and the notification requirements of section 3010 of RCRA, unless it has been granted an extension to the 90-day period. Such extension may be granted by the Director if hazardous wastes shall remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(c) Accumulation of F006. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to Rules R315-124, R315-264 through R315-266 and R315-270, and the notification requirements of section 3010 of RCRA, provided that it complies with all of the following additional conditions for exemption:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator shall comply with the applicable conditions for exemption in Subsection R315-262-17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator shall comply with the applicable conditions for exemption of Subsection R315-262-17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator shall comply with 40 CFR 265.1100 through 265.1102, which are incorporated by reference in Section R315-265-1, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101, which is incorporated by reference in Section R315-265-1, in the facility's files prior to operation of the unit. The large quantity generator shall maintain the following records:

(I) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(II) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in 40 CFR 265.110 through 265.121 and 265.140 through 265.148, which are incorporated by reference in Section R315-265-1, except for those referenced in Subsection R315-

262-17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and shall be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words "Hazardous Waste"; and

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(v) The large quantity generator complies with the requirements in Subsection R315-262-17(a)(6) and (7).

(d) F006 transported over 200 miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to Rules R315-124, R315-264 through R315-266, R315-270, and the notification requirements of section 3010 of RCRA, if the large quantity generator complies with all of the conditions for exemption of Subsections R315-262-17(c)(1) through (4).

(e) F006 accumulation time extension. A large quantity generator accumulating F006 in accordance with Subsections R315-262-17(c) and (d) who accumulates F006 waste on site for more than 180 days, or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more, or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of Rules R315-124, R315-264, R315-265, and R315-270, and the notification requirements of section 3010 of RCRA, unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Director if F006 waste shall remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste shall remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.

(f) Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person, as defined in Section R315-260-10, without a storage permit or interim status and without complying with the requirements of Rules R315-124, R315-264 through R315-266, R315-268, and R315-270, and the notification requirements of section 3010 of RCRA, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

(1) The large quantity generator notifies the Director at

least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA Form 8700-12) within 30 days after a change in the name or site address for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records shall identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in Subsection R315-262-10(a)(1)(iii) and the conditions for exemption in Subsection R315-262-17(f) for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in Subsection R315-262-17(a)(5), the large quantity generator shall label the container or unit with the date accumulation started, i.e., the date the hazardous waste was received from the very small quantity generator. If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) Rejected load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of Sections R315-264-72 or 40 CFR 265.72, which is incorporated by reference in Section R315-265-1, may accumulate the returned waste on site in accordance with Subsections R315-262-17(a) and (b). Upon receipt of the returned shipment, the generator shall:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

### **R315-262-18. General -- EPA Identification Numbers and Re-Notification for Small Quantity Generators and Large Quantity Generators.**

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director.

(b) A generator who has not received an EPA identification number shall obtain one by applying to the Director using EPA Form 8700-12. Upon receiving the request the Director will assign an EPA identification number to the generator.

(c) A generator shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) Re-notification.

(1) A small quantity generator shall re-notify the Director starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification shall be submitted by September 1st of each year in which re-notifications are required.

(2) A large quantity generator shall re-notify the Director by March 1 of each even-numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-

notification as part of its Biennial Report required under Section R315-262-41.

(e) A recognized trader shall not arrange for import or export of hazardous waste without having received an EPA identification number from the Director.

**R315-262-20. Manifest Requirements Applicable to Small and Large Quantity Generators -- General Requirements.**

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to Rule R315-262.

(2) Reserved.

(3) Electronic manifest. In lieu of using the manifest form specified in Subsection R315-262-20(a)(1), a person required to prepare a manifest under Subsection R315-262-20(a)(1) may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in Section R315-262-24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) The requirements of Section R315-262-20 through 27 do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of Sections R315-262-20 through 27 and Subsection R315-262-32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding Subsection R315-263-10(a), the generator or transporter shall comply with the requirements for transporters set forth in Sections R315-263-30 and 31 in the event of a discharge of hazardous waste on a public or private right-of-way.

**R315-262-21. Manifest Requirements Applicable to Small and Large Quantity Generators -- Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests.**

(a)(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under Subsection R315-262-21(c) and (e).

(2) The approved registrant is responsible for ensuring that

the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of Section R315-262-21. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant shall submit an initial application to the EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house, i.e., using its own printing establishments, or through a separate, i.e., unaffiliated, printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application shall identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries, e.g., prime and subcontractor relationships, the role of each shall be discussed. The application shall provide the name and mailing address of each company. It also shall provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of Section R315-262-21. The application shall discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application shall describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application shall describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application shall also indicate how the printer will pre-print a unique number on each form, e.g., crash or press numbering. The application also shall explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public, e.g., for purchase.

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so, e.g., corporate brochures, product samples, customer references, documentation of ISO certification, so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant shall use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of Section R315-262-21 and that it will notify the EPA Director of the Office of Resource

Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA shall review the application submitted under Subsection R315-262-21(b) and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under Subsection R315-262-21(c), EPA shall provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in Subsection R315-262-21(d)(3). The registrant's samples shall meet all of the specifications in Subsection R315-262-21(f) and be printed by the company that will print the manifest as identified in the application approved under Subsection R315-262-21(c).

(2) The registrant shall submit a description of the manifest samples as follows:

(i) Paper type, i.e., manufacturer and grade of the manifest paper;

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant shall indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA shall evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant shall print the manifest and continuation sheet according to its application approved under Subsection R315-262-21(c) and the manifest specifications in Subsection R315-262-21(f). It also shall print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets shall be printed according to the following specifications:

(1) The manifest and continuation sheet shall be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA shall be pre-printed in Item 4 of the manifest. The tracking number shall consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet shall be printed on 8 1/2 x 11-inch white paper, excluding common stubs, e.g., top- or side-bound stubs. The paper shall be durable enough to withstand normal use.

(4) The manifest and continuation sheet shall be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution shall be printed with a distinct ink color or with another method; e.g., white text against black background in text box, or, black text against grey background in text box; that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

(5) The manifest and continuation sheet shall be printed as six-copy forms. Copy-to-copy registration shall be exact within 1/32 nd of an inch. Handwritten and typed impressions on the form shall be legible on all six copies. Copies shall be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet shall indicate how the copy shall be distributed, as follows:

(i) Page 1, top copy: "Designated facility to destination State, if required".

(ii) Page 2: "Designated facility to generator State, if required".

(iii) Page 3: "Designated facility to generator".

(iv) Page 4: "Designated facility's copy".

(v) Page 5: "Transporter's copy".

(vi) Page 6 (bottom copy): "Generator's initial copy".

(7) The instructions in the appendix to Rule R315-262 shall appear legibly on the back of the copies of the manifest and continuation sheet as provided in Subsection R315-262-21(f). The instructions shall not be visible through the front of the copies when photocopied or faxed.

(i) Manifest EPA Form 8700-22.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(ii) Manifest EPA Form 8700-22A.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under Subsections R315-262-21(c) and (e). A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator shall determine whether the generator state or the consignment state for a shipment regulates any additional wastes, beyond those regulated Federally, as hazardous wastes under these states' authorized programs. Generators also shall determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator shall supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under Subsection R315-262-21(c), e.g., to update a company phone number or name of contact person, the registrant shall revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either shall approve or deny the revision. If the Agency denies the revision, it shall explain the reasons for the denial, and it shall contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant shall submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency shall either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under Subsection R315-262-21(e), then the registrant shall submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new



printer, the registrant shall submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA shall evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under Subsection R315-262-21(e), a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it shall submit three samples of the manifest or continuation sheet to the registry for approval. EPA shall evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA shall notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under Subsection R315-262-21(d) or (h)(3) if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision; e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant. A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant shall notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under Subsection R315-262-21(e), EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA shall contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA shall send a warning letter to the registrant that specifies the date by which it shall come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA shall send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant shall provide information on its printing activities to EPA if requested.

#### **R315-262-22. Manifest Requirements Applicable to Small and Large Quantity Generators -- Number of Copies.**

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

#### **R315-262-23. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Manifest.**

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with Subsection R315-262-40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within Utah solely by water, bulk shipments only, the generator shall send three copies of the manifest dated and signed in accordance with Section R315-262-23 to the owner or operator of the designated facility or the last water, bulk shipment, transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with Section R315-262-23 to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

Note: See Subsections R315-263-20(e) and (f) for special provisions for rail or water, bulk shipment, transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted by reference in Section R315-265-1; the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

#### **R315-262-24. Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Electronic Manifest.**

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-262-24 in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention

of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Utah inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-262-24 if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest shall also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator shall obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to Rule R315-262, and use these paper forms from this point forward in accordance with the requirements of Section R315-262-23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/officer certification on the printed copy of the manifest provided under Subsection R315-262-24(d).

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to Rule R315-262.

**R315-262-25. Manifest Requirements Applicable to Small and Large Quantity Generators -- Electronic Manifest Signatures.**

Electronic signature methods for the e-Manifest system shall:

(a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(b) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical

as possible for the users of the manifest.

**R315-262-27. Manifest Requirements Applicable to Small and Large Quantity Generators -- Waste Minimization Certification.**

A generator who initiates a shipment of hazardous waste shall certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

**R315-262-30. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Packaging.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR parts 173, 178, and 179.

**R315-262-31. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Labeling.**

Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172.

**R315-262-32. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Marking.**

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

(1) HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

- (2) Generator's Name and Address \_\_\_\_\_.
- (3) Generator's EPA Identification Number \_\_\_\_\_.
- (4) Manifest Tracking Number \_\_\_\_\_.
- (5) EPA Hazardous Waste Number(s) \_\_\_\_\_.

(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by Subsection R315-262-32(b)(5) or paragraph (d).

(d) Lab packs that will be incinerated in compliance with Subsection R315-268-42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

**R315-262-33. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Placarding.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous

materials under 49 CFR part 172, subpart F.

**R315-262-35. Pre-Transport Requirements Applicable to Small and Large Quantity Generators -- Liquids in Landfills Prohibition.**

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids shall meet additional requirements as specified in Sections R315-264-314 and 40 CFR 265.314, which is incorporated by reference in Section R315-265-1.

**R315-262-40. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping.**

(a) A generator shall keep a copy of each manifest signed in accordance with Subsection R315-262-23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall follow Subsection R315-262-11(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods or retention referred to in Section R315-262-40 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Director.

(e) Records maintained in accordance with Section R315-262-40 and any other records which the Director deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-262-11 shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Director as provided in R315-260-5 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

**R315-262-41. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Biennial Report for Large Quantity Generators.**

(a) A generator who is a large quantity generator for at least one month of an odd-numbered year, reporting year, who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year and shall cover generator activities during the previous year.

(b) Any generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on site shall complete and submit EPA Form 8700-13 A/B to the Director by March 1 of the following even-numbered year covering those wastes in accordance with the provisions of Rules R315-264, R315-265, R315-266, and R315-270. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to Subsection R315-262-17(f).

(c) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at Subsection R315-262-83(g) for hazardous waste exporters.

**R315-262-42. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Exception**

**Reporting.**

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e) in a calendar month, shall submit an Exception Report to the Director if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Director.

Note: The submission to the Director need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest, following the procedures of Subsections R315-264-72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6), which are adopted by reference; the generator shall comply with the requirements of Subsections R315-262-42(a) or (b), as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Subsection R315-262-42(a) or (b) for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator shall have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

**R315-262-43. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Additional Reporting.**

The Director, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in Rule R315-261.

**R315-262-44. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators -- Recordkeeping for**

**Small Quantity Generators.**

A small quantity generator is subject only to the following independent requirements in Sections R315-262-40 through R315-262-43:

- (a) Subsection R315-262-40(a), (c), and (d), recordkeeping;
- (b) Subsection R315-262-42(b), exception reporting; and
- (c) Section R315-262-43, additional reporting.

**R315-262-50. Exports of Hazardous Waste -- Applicability.**

Sections R315-262-50 through 58 establish requirements applicable to exports of hazardous waste. Except to the extent Section R315-262-58 provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of Sections R315-262-50 through 58 and a transporter transporting hazardous waste for export shall comply with applicable requirements of Rule R315-263. Section R315-262-58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

**R315-262-51. Exports of Hazardous Waste -- Definitions.**

In addition to the definitions set forth at Section R315-260-10, the following definitions apply to Sections R315-262-50 through 58:

Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment. Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Sections R315-262-20 through 25 and 27 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal, except short-term storage incidental to transportation. Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.

**R315-262-52. Exports of Hazardous Waste -- General Requirements.**

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of Sections R315-262-50 through 58 and Rule R315-263. Exports of hazardous waste are prohibited unless:

- (a) Notification in accordance with Section R315-262-53 has been provided;
- (b) The receiving country has consented to accept the hazardous waste;
- (c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest; or shipping paper for exports by water, bulk shipment.
- (d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

**R315-262-53. Exports of Hazardous Waste -- Notification of Intent to Export.**

(a) A primary exporter of hazardous waste shall notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

- (1) Name, mailing address, telephone number and EPA ID number of the primary exporter;
- (2) By consignee, for each hazardous waste type:
  - (i) A description of the hazardous waste and the EPA hazardous waste number, from Sections R315-261-20 through 24, and R315-261-30 through 35, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;
  - (ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.
  - (iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);
  - (iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;
  - (v) A description of the means by which each shipment of the hazardous waste will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;
  - (vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country, e.g., land or ocean incineration, other land disposal, ocean dumping, recycling;
  - (vii) The name and site address of the consignee and any alternate consignee; and
  - (viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

(c) Except for changes to the telephone number in Subsection R315-262-53(a)(1), changes to Subsection R315-262-53(a)(2)(v) and decreases in the quantity indicated pursuant to Subsection R315-262-53(a)(2)(iii) when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification, the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes, except for changes to Subsection R315-262-53(a)(2)(viii) and in the ports of entry to and departure from transit countries pursuant to Subsection R315-262-53(a)(2)(iv), has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-262-53(a). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-262-53(a), EPA may find the notification not complete until any such claim is resolved in accordance with Section R315-260-2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA Acknowledgment of Consent to the primary exporter for purposes of Subsection R315-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

**R315-262-54. Exports of Hazardous Waste -- Special Manifest Requirements.**

A primary exporter shall comply with the manifest requirements of Sections R315-262-20 through 23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In the International Shipments block, the primary exporter shall check the export box and enter the point of exit, city and State, from the United States.

(d) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(f) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in Subsection R315-264-72(a), between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of Subsection R315-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Subsection R315-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter shall attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the

United States in accordance with Subsection R315-263-20(g)(4).

**R315-262-55. Exports of Hazardous Waste -- Exception Reports.**

In lieu of the requirements of Section R315-262-42, a primary exporter shall file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter;

(b) Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

**R315-262-56. Exports of Hazardous Waste -- Annual Reports.**

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 and R315-261-30 through 35, DOT hazard class, the name and US EPA ID number, where applicable, for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to Section R315-262-41, in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW.,

Washington, DC 20004.

**R315-262-57. Exports of Hazardous Waste -- Recordkeeping.**

(a) For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in Section R315-262-57 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

**R315-262-58. Exports of Hazardous Waste -- International Agreements.**

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in Subsection R315-262-58(a)(1) for purposes of recovery is subject to Sections R315-262-80 through 89. The requirements of Sections R315-262-50 through 58 and R315-262-60 do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(1) For the purposes of Sections R315-262-80 through 89, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of Sections R315-262-80 through 89, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery; e.g., incineration, disposal; Mexico, for any purpose; or Canada, for any purpose, remains subject to the requirements of Sections R315-262-50 through 58 and 60, and is not subject to the requirements of Sections R315-262-80 through 89.

**R315-262-60. Imports of Hazardous Waste.**

(a) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of Rule R315-262.

(b) When importing hazardous waste, a person shall meet all the requirements of Section R315-262-20 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests; e.g., states, waste handlers, and/or commercial forms printers.

(d) In the International Shipments block, the importer shall check the import box and enter the point of entry, city and State, into the United States.

(e) The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with Subsections R315-264-71(a)(3) and 40 CFR 265.71(a)(3), which is adopted by reference.

**R315-262-70. Farmers.**

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in Rule R315-262 or other standards in Rules R315-264, R315-265, R315-268, or R315-270 for those wastes provided he triple rinses each emptied pesticide container in accordance with Subsection R315-261-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

**R315-262-80. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Applicability.**

(a) The requirements of Sections R315-262-80 through 89 apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in Subsection R315-262-58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either the manifesting requirements Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) Any person; exporter, importer, or recovery facility operator; who mixes two or more wastes, including hazardous and non-hazardous wastes, or otherwise subjects two or more wastes, including hazardous and non-hazardous wastes, to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under Sections R315-262-80 through 89.

**R315-262-81. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Definitions.**

The following definitions apply to Sections R315-262-80 through 89.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in Subsection R315-262-58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in Subsection R315-262-58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery

operations therein.

Country of transit means any designated OECD Member country listed in Subsections R315-262-58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, exporter is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in Section R315-262-58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1-R10.

R12 Exchange of wastes for submission to any of the operations numbered R1-R11.

R13 Accumulation of material intended for any operation numbered R1-R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

### **R315-262-82. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- General Conditions.**

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in Subsection R315-262-80(a). The OECD Green and Amber lists are incorporated

by reference in Subsection R315-262-89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in Section R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures set forth in Sections R315-262-80 through 89.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in Subsection R315-262-58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts. Note to Subsection R315-262-82(a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of Sections R315-262-80 through 89. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes, e.g., the Toxic Substances Control Act, restrict certain waste imports or exports. Such restrictions continue to apply with regard to Sections R315-262-80 through 89.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery. Note to Subsection R315-262-82(a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a

mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement shall be in compliance with applicable international transport agreements; and

Note to Subsection R315-262-82(b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country:

(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in Subsection R315-262-58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification shall comply with the notice and consent procedures in Section R315-262-83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.

(i) The thirty day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in Subsection R315-262-58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in Subsection R315-262-82(c)(1), in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export wastes subject to the Amber control procedures. When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The provisions of Subsection R315-262-82(c) apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export:

The U.S. importer shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States, as country of transit, to the country of export: The U.S. transporter shall inform EPA at the specified address in Subsection R315-262-83(b)(1)(i) of the need to return the shipment. EPA shall then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within ninety days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States, as country of export: The U.S. exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Subsection R315-262-87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all Amber control procedures for notification and consent as set forth in Section R315-262-83 and for the movement document as set forth in Section R315-262-84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place.

(2) Within three days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and



Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertains.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) Laboratory analysis exemption. The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis shall still be appropriately packaged and labeled.

**R315-262-83. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Notification and Consent.**

(a) Applicability. Consent shall be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to Sections R315-262-80 through 89. Hazardous wastes subject to the Amber control procedures are subject to the requirements of Subsection R315-262-83(b); and wastes not identified on any list are subject to the requirements of Subsection R315-262-83(c).

(b) Amber wastes. Exports of hazardous wastes from the United States as described in Subsection R315-262-80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of Subsections R315-262-83(b)(1) or (b)(2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five days prior to commencement of each transboundary movement, the exporter shall provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Subsection R315-262-83(d). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned; i.e., exporting, importing, or transit; to a notification provided pursuant to Subsection R315-262-83(b)(1)(i) within thirty days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter shall provide EPA a notification that contains all the information identified in Subsection R315-262-83(d) in English, at least ten days in advance of commencing shipment to a pre-approved facility. The notification shall indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in Subsection R315-262-83(b)(1)(i). This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification-Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Subsection R315-262-83(b)(1)(i) may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still shall be accompanied by its own movement document pursuant to Section R315-262-84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in Subsection R315-262-89(d), but which are considered hazardous under U.S. national procedures as defined in Subsection R315-262-80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with Subsection R315-262-83(b). Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in Subsection R315-262-89(d), and are not considered hazardous under U.S. national procedures as defined by Subsection R315-262-80(a) are subject to the Green control procedures.

(d) Notifications submitted under Section R315-262-83 shall include the information specified in Subsections R315-262-83(d)(1) through (d)(14):

(1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number, if applicable, address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name, if not the owner or operator of the recovery facility, address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in Subsection R315-262-89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in Section R315-262-81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

Note to Subsection R315-262-83(d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) Certificate of Recovery. As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Section R315-262-85.

#### **R315-262-84. Transboundary Movements of Hazardous Waste for Recovery or Disposal -- Movement Document.**

(a) All U.S. parties subject to the contract provisions of Section R315-262-85 shall ensure that a movement document meeting the conditions of Subsection R315-262-84(b) accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subsections R315-262-84(a)(1) and (2).

(1) For shipments of hazardous waste within the United States solely by water, bulk shipments only, the generator shall

forward the movement document with the manifest to the last water, bulk shipment, transporter to handle the waste in the United States if exported by water, in accordance with the manifest routing procedures at Subsection R315-262-23(c).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest, in accordance with the routing procedures for the manifest in Subsection R315-262-23(d), to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document shall include all information required under Section R315-262-83, for notification, as well as the following Subsection R315-262-84(b)(1) through (b)(7):

(1) Date movement commenced;

(2) Name; if not exporter, address; telephone; fax numbers; and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification; license, registered name or registration number; or means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty day tacit consent period; or

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

Delete sentences that are not applicable

Name:

Signature:

Date:

(7) Appropriate signatures for each custody transfer, e.g., transporter, importer, and owner or operator of the recovery facility.

(c) Exporters also shall comply with the special manifest requirements of Subsections R315-262-54(a), (b), (c), (e), and (i) and importers shall comply with the import requirements of Section R315-262-60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document; e.g., transporter, importer, and owner or operator of the recovery facility.

(e) Within three working days of the receipt of imports subject to Sections R315-262-80 through 89, the owner or operator of the U.S. recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under Section R315-262-81, the facility shall retain the original of the movement document for three years.

**R315-262-85. Contracts.**

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Such contracts or equivalent arrangements shall be executed by the exporter and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of Section R315-262-85 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements shall specify the name and EPA ID number, where available, of Subsections R315-262-85(b)(1) through (b)(4):

- (1) The generator of each type of waste;
- (2) Each person who will have physical custody of the wastes;
- (3) Each person who will have legal control of the wastes; and
- (4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts shall specify that the importer will provide the notification required in Subsection R315-262-82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Subsection R315-262-85(e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of Sections R315-262-80 through 89.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements, when the movement occurs between parties controlled by the same corporate or legal entity. Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) shall be treated as confidential and shall be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Subsection R315-262-85(g): Although the United

States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA shall request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

**R315-262-86. Provisions Relating to Recognized Traders.**

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations, including storage prior to recovery, is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste shall comply with all the requirements of Sections R315-262-80 through 89 associated with being an exporter or importer.

**R315-262-87. Reporting and Recordkeeping.**

(a) Annual reports. For all waste movements subject to Sections R315-262-80 through 89, persons, e.g., exporters, recognized traders, who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement documentation under Section R315-262-84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. If the primary exporter or the person who initiates the movement document under Section R315-262-84 is required to file an annual report for waste exports that are not covered under Sections R315-262-80 through 89, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section. Such reports shall include all of the following Sections R315-262-87(a)(1) through (a)(6) specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, from Sections R315-261-20 through 24 or R315-262-30 through 35, designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in Subsection R315-262-89(d), DOT hazard class, the name and U.S. EPA identification number, where applicable, for each transporter used, the total amount of hazardous waste shipped pursuant to Sections R315-262-80 through 89, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to Section R315-262-41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for

years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under Section R315-262-84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in Section R315-262-51 or who initiates the movement document under Section R315-262-84 shall file an exception report in lieu of the requirements of Section R315-262-42, if applicable, with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest, if applicable, signed by the transporter identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;

(2) Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in Section R315-262-51 or who initiate the movement document under Section R315-262-84 shall keep the following records in Subsections R315-262-87(c)(1)(i) through (c)(1)(iv):

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery, i.e., movement document, sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in Section R315-262-87 are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

#### **R315-262-89. OECD Waste Lists.**

(a) General. For the purposes of Sections R315-262-80 through 89, a waste is considered hazardous under U.S. national procedures, and hence subject to Sections R315-262-80 through 89, if the waste:

(1) Meets the Federal definition of hazardous waste in Section R315-261-3; and

(2) Is subject to either Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(b) If a waste is hazardous under Subsection R315-262-

89(a), it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Section R315-262-81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Section R315-262-82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials shall be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

#### **R315-262-200. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Definitions for Sections R315-262-200 through R315-262-216.**

(a) The following definitions apply to Sections R315-262-200 through 216:

(1) "College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

(2) "Eligible academic entity" means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

(3) "Formal written affiliation agreement for a non-profit research institute" means a written document that establishes a relationship between institutions for the purposes of research and/or education and is signed by authorized representatives, as defined by Section R315-260-10, from each institution. A relationship on a project-by-project or grant-by-grant basis is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the Accreditation Council for Graduate Medical Education, with an accredited medical program or medical school.

(4) Laboratory means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research, or diagnostic purposes at a teaching hospital, and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories, or diagnostic laboratories at teaching hospitals, are also considered

laboratories.

(5) "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis, e.g., at the end of a semester or academic year, or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by Section R315-262-208 does not qualify as a laboratory clean-out.

(6) "Laboratory worker" means a person who handles chemicals and/or unwanted material in a laboratory and may include, but is not limited to, faculty, post-doctoral fellows, interns, researchers, technicians, supervisors/managers, and principal investigators. A person does not need to be paid or otherwise compensated for his/her work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.

(7) "Non-profit research institute" means an organization that conducts research as its primary function and files as a non-profit organization under the tax code of 26 U.S.C. 501(c)(3).

(8) "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in Subsection R315-261-33(e) for reactivity.

(9) "Teaching hospital" means a hospital that trains students to become physicians, nurses or other health or laboratory personnel.

(10) "Trained professional" means a person who has completed the applicable RCRA training requirements of 40 CFR 265.16, which is incorporated by reference in Section R315-265-1, for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with Subsection R315-262-17 for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

(11) "Unwanted material" means any chemical, mixtures of chemicals, products of experiments or other material from a laboratory that is no longer needed, wanted or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to Section R315-261-2, or a hazardous waste pursuant to Section R315-261-3. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material," as allowed by Subsection R315-262-206(a)(1)(i), the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under Section R315-262-200 through 216.

(12) "Working container" means a small container, i.e., two gallons or less, that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

**R315-262-201. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Applicability of Sections R315-262-200 through R315-262-216.**

(a) Large quantity generators and small quantity generators. Sections R315-262-200 through R315-262-216 provides alternative requirements to the requirements in Sections R315-262-11 and R315-262-15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to

be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

(b) Very small quantity generators. Sections R315-262-200 through R315-262-216 provide alternative requirements to the conditional exemption in Section R315-262-14 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to Sections R315-262-200 through R315-262-216, provided that they complete the notification requirements of Section R315-262-203.

**R315-262-202. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Sections R315-262-200 through R315-262-216 are Optional.**

(a) Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through R315-262-216 with respect to its laboratories, as an alternative to complying with the requirements of Section R315-262-11 and Section R315-262-15.

(b) Very small quantity generators. Eligible academic entities have the option of complying with Sections R315-262-200 through 216 with respect to laboratories, as an alternative to complying with the conditional exemption of Section R315-262-14.

**R315-262-203. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- How an Eligible Academic Entity Indicates it will be Subject to the Requirements of Sections R315-262-200 through R315-262-216.**

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form, EPA Form 8700-12, that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site, as defined by Section R315-260-10. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is electing to be subject to the requirements of Sections R315-262-200 through R315-262-216, and shall submit the Site Identification Form before it begins operating under Sections R315-262-200 through R315-262-216.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.
- (6) North American Industry Classification System (NAICS) Code(s) for the Site.
- (7) Site Mailing Address.
- (8) Site Contact Person.
- (9) Operator and Legal Owner of the Site.
- (10) Type of Regulated Waste Activity.
- (11) Certification.

(c) An eligible academic entity shall keep a copy of the notification on file at the eligible academic entity for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(d) A teaching hospital that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the teaching hospital for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

(e) A non-profit research institute that is not owned by a college or university shall keep a copy of its formal written affiliation agreement with a college or university on file at the non-profit research institute for as long as its laboratories are subject to Sections R315-262-200 through R315-262-216.

**R315-262-204. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - How an Eligible Academic Entity Indicates It Will Withdraw from the Requirements of Sections R315-262-200 Through 216.**

(a) An eligible academic entity shall notify the Director in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700-12), that it is electing to no longer be subject to the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number shall notify that it is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 for all the laboratories owned by the eligible academic entity that are on-site and that it will comply with the conditional exemption in Section R315-262-14. An eligible academic entity shall submit a separate notification, Site Identification Form, for each EPA Identification Number, or site, for very small quantity generators, that is withdrawing from the requirements of Sections R315-262-200 through R315-262-216 and shall submit the Site Identification Form before it begins operating under the requirements of Sections R315-262-11 and R315-262-15 for small quantity generators and large quantity generators, or Section R315-262-14 for very small quantity generators.

(b) When submitting the Site Identification Form, the eligible academic entity shall, at a minimum, fill out the following fields on the form:

- (1) Reason for Submittal.
- (2) Site EPA Identification Number, except for very small quantity generators.
- (3) Site Name.
- (4) Site Location Information.
- (5) Site Land Type.
- (6) North American Industry Classification System (NAICS) Code(s) for the Site.
- (7) Site Mailing Address.
- (8) Site Contact Person.
- (9) Operator and Legal Owner of the Site.
- (10) Type of Regulated Waste Activity.
- (11) Certification.

(c) An eligible academic entity shall keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

**R315-262-205. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Summary of the Requirements of Sections R315-262-200 through R315-262-216.**

An eligible academic entity that chooses to be subject to Sections R315-262-200 through 216 is not required to have interim status or a RCRA Part B permit for the accumulation of unwanted material and hazardous waste in its laboratories, provided the laboratories comply with the provisions of Sections R315-262-200 through 216 and the eligible academic entity has a Laboratory Management Plan (LMP) in accordance with Section R315-262-214 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of Sections R315-262-200 through 216.

**R315-262-206. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Labeling and Management Standards for Containers of Unwanted Material in the Laboratory.**

An eligible academic entity shall manage containers of unwanted material while in the laboratory in accordance with the requirements in Section R315-262-206.

(a) Labeling: Label unwanted material as follows:

(1) The following information shall be affixed or attached to the container:

(i) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

(ii) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

- (A) The name of the chemical(s),
- (B) The type or class of chemical, such as organic solvents or halogenated organic solvents.

(2) The following information may be affixed or attached to the container, but shall at a minimum be associated with the container:

(i) The date that the unwanted material first began accumulating in the container, and

(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to Section R315-262-11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

(A) The name and/or description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

(B) Whether the unwanted material has been used or is unused,

(C) A description of the manner in which the chemical was produced or processed, if applicable.

(b) Management of Containers in the Laboratory. An eligible academic entity shall properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management shall include the following:

(1) Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired, and

(2) Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and

(3) Containers shall be kept closed at all times, except:

(i) When adding, removing or bulking unwanted material,

or

(ii) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container shall either be closed or the contents emptied into a separate container that is then closed, or

(iii) When venting of a container is necessary:

(A) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs; or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

**R315-262-207. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Training.**

An eligible academic entity shall provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

(a) Training for laboratory workers and students shall be commensurate with their duties so they understand the requirements in Sections R315-262-200 through 216 and can implement them.

(b) An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:

(1) Instruction by the professor or laboratory manager before or during an experiment; or

(2) Formal classroom training; or

(3) Electronic/written training; or

(4) On-the-job training; or

(5) Written or oral exams.

(c) An eligible academic entity that is a large quantity generator shall maintain documentation for the durations specified in 40 CFR 265.16(e), which is incorporated by reference in R315-265-1, demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

(1) Sign-in/attendance sheet(s) for training session(s); or

(2) Syllabus for training session; or

(3) Certificate of training completion; or

(4) Test results.

(d) A trained professional shall:

(1) Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory, and

(2) Make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material.

**R315-262-208. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Removing Containers of Unwanted Material from the Laboratory.**

(a) Removing containers of unwanted material on a regular schedule. An eligible academic entity shall either:

(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

(2) Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

(b) The eligible academic entity shall specify in Part I of its Laboratory Management Plan whether it will comply with Subsection R315-262-208(a)(1) or (a)(2) for the regular removal of unwanted material from its laboratories.

(c) The eligible academic entity shall specify in Part II of its Laboratory Management Plan how it will comply with Subsection R315-262-208(a)(1) or (a)(2) and develop a

schedule for regular removals of unwanted material from its laboratories.

(d) Removing containers of unwanted material when volumes are exceeded.

(1) If a laboratory accumulates a total volume of unwanted material, including reactive acutely hazardous unwanted material, in excess of 55 gallons before the regularly scheduled removal, the eligible academic entity shall ensure that all containers of unwanted material in the laboratory, including reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 55 gallons is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 55 gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

(2) If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity shall ensure that all containers of reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, with the date that 1 quart or 1 kg is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.

**R315-262-209. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Where and When to Make the Hazardous Waste Determination and Where to Send Containers of Unwanted Material Upon Removal from the Laboratory.**

(a) Large quantity generators and small quantity generators—an eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in any of the following areas:

(1) In the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210;

(2) Within 4 calendar days of arriving at an on-site central accumulation area, in accordance with Section R315-262-211; and

(3) Within 4 calendar days of arriving at an on-site interim status or permitted treatment, storage or disposal facility, in accordance with Section R315-262-212.

(b) Very small quantity generators—An eligible academic entity shall ensure that a trained professional makes a hazardous waste determination, pursuant to Subsections R315-262-11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with Section R315-262-210.

**R315-262-210. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination in the Laboratory Before the Unwanted Material is Removed from the Laboratory.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material in the laboratory, it shall comply with the following:

(a) A trained professional shall make the hazardous waste determination, pursuant to Subsections R315-262-11(a) through

(d), before the unwanted material is removed from the laboratory.

(b) If an unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory; and

(2) Write the appropriate hazardous waste code(s) on the label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste is transported off-site.

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Section R315-262-13, in the calendar month that the hazardous waste determination was made.

(c) A trained professional shall accompany all hazardous waste that is transferred from the laboratory(ies) to an on-site central accumulation area or on-site interim status or permitted treatment, storage or disposal facility.

(d) When hazardous waste is removed from the laboratory:

(1) Large quantity generators and small quantity generators shall ensure it is taken directly from the laboratory(ies) to an on-site central accumulation area, or on-site interim status or permitted treatment, storage or disposal facility, or transported off-site.

(2) Very small quantity generators shall ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in Section R315-262-14.

(e) An unwanted material that is a hazardous waste is subject to all applicable hazardous waste regulations when it is removed from the laboratory.

**R315-262-211. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities - Making the Hazardous Waste Determination at an On-Site Central Accumulation Area.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site central accumulation area, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site central accumulation area.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site central accumulation area.

(c) The unwanted material becomes subject to the generator accumulation regulations of Section R315-262-16 for small quantity generators or Section R315-262-17 for large quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling conditions of Subsections R315-262-16(b)(6) and 17(a)(5).

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container, within 4 calendar days of arriving at the on-site central accumulation area and before the hazardous waste may be removed from the on-site central accumulation area, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed

of on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to Section R315-262-13 in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

**R315-262-212. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Making the Hazardous Waste Determination at an On-Site Interim Status or Permitted Treatment, Storage or Disposal Facility.**

If an eligible academic entity makes the hazardous waste determination, pursuant to Section R315-262-11, for unwanted material at an on-site interim status or permitted treatment, storage or disposal facility, it shall comply with the following:

(a) A trained professional shall accompany all unwanted material that is transferred from the laboratory(ies) to an on-site interim status or permitted treatment, storage or disposal facility.

(b) All unwanted material removed from the laboratory(ies) shall be taken directly from the laboratory(ies) to the on-site interim status or permitted treatment, storage or disposal facility.

(c) The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the on-site treatment, storage or disposal facility.

(d) A trained professional shall determine, pursuant to Subsections R315-262-11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage or disposal facility.

(e) If the unwanted material is a hazardous waste, the eligible academic entity shall:

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage or disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

(2) Write the appropriate hazardous waste code(s) on the container label that is associated with the container, or on the label that is affixed or attached to the container, if that is preferred, before the hazardous waste may be treated or disposed on-site or transported off-site, and

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to Subsections R315-261-5(c) and (d) in the calendar month that the hazardous waste determination was made, and

(4) Manage the hazardous waste according to all applicable hazardous waste regulations.

**R315-262-213. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Laboratory Clean-outs.**

(a) One time per 12 month period for each laboratory, an eligible academic entity may opt to conduct a laboratory clean-out that is subject to all the applicable requirements of Sections R315-262-200 through 216, except that:

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material, the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg or



solid reactive acutely hazardous unwanted material, as required by Section R315-262-208. Instead, the eligible academic entity shall remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through R315-261-35 or exhibiting one or more characteristics in Sections R315-261-20 through R315-261-24, generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences shall be counted toward hazardous waste generator category, pursuant to Section R315-262-13, if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity shall count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under Subsection R315-262-213(a)(2), and if it generates more than 1 kg per month of acute hazardous waste or more than 100 kg per month of non-acute hazardous waste, i.e., the very small quantity generator limits as defined in Section R315-260-10, the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

(4) An eligible academic entity shall document the activities of the laboratory clean-out. The documentation shall, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity shall maintain the records for a period of three years from the date the clean-out ends; and

(b) For all other laboratory clean-outs conducted during the same 12-month period, an eligible academic entity is subject to all the applicable requirements of Sections R315-262-200 through 216, including, but not limited to:

(1) The requirement to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons, or 1 quart of reactive acutely hazardous unwanted material, as required by Section R315-262-208; and

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to Section R315-262-13.

**R315-262-214. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities Laboratory Management Plan.**

An eligible academic entity shall develop and retain a written Laboratory Management Plan, or revise an existing written plan. The Laboratory Management Plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with Sections R315-262-200 through 216. An eligible academic entity may write one Laboratory Management Plan for all the laboratories owned by the eligible academic entity that have opted into Sections R315-262-200 through 216, even if the laboratories are located at sites with different EPA Identification Numbers. The Laboratory Management Plan shall contain two parts with a total of nine elements identified in Subsections R315-262-214(a) and (b). In Part I of its Laboratory Management Plan, an eligible academic entity shall describe its procedures for each of the elements listed in Subsection R315-262-214(a). An eligible academic entity shall implement and comply with the specific provisions that it develops to address the elements in Part I of the Laboratory Management Plan. In Part II of its Laboratory Management Plan, an eligible academic entity shall describe its

best management practices for each of the elements listed in Subsection R315-262-214(b). The specific actions taken by an eligible academic entity to implement each element in Part II of its Laboratory Management Plan may vary from the procedures described in the eligible academic entity's Laboratory Management Plan, without constituting a violation of Sections R315-262-200 through 216. An eligible academic entity may include additional elements and best management practices in Part II of its Laboratory Management Plan if it chooses.

(a) The eligible academic entity shall implement and comply with the specific provisions of Part I of its Laboratory Management Plan. In Part I of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe procedures for container labeling in accordance with Subsection R315-262-206(a), as follows:

(i) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material."

(ii) Identifying the manner in which information that is "associated with the container" will be imparted.

(2) Identify whether the eligible academic entity will comply with Subsection R315-262-208(a)(1) or (a)(2) for regularly scheduled removals of unwanted material from the laboratory.

(b) In Part II of its Laboratory Management Plan, an eligible academic entity shall:

(1) Describe its intended best practices for container labeling and management, see the required standards at Section R315-262-206.

(2) Describe its intended best practices for providing training for laboratory workers and students commensurate with their duties, see the required standards at Subsection R315-262-207(a).

(3) Describe its intended best practices for providing training to ensure safe on-site transfers of unwanted material and hazardous waste by trained professionals, see the required standards at Subsection R315-262-207(d)(1).

(4) Describe its intended best practices for removing unwanted material from the laboratory, including:

(i) For regularly scheduled removals-Develop a regular schedule for identifying and removing unwanted materials from its laboratories, see the required standards at Subsections R315-262-208(a)(1) and (a)(2).

(ii) For removals when maximum volumes are exceeded:

(A) Describe its intended best practices for removing unwanted materials from the laboratory within 10 calendar days when unwanted materials have exceeded their maximum volumes, see the required standards at Subsection R315-262-208(d).

(B) Describe its intended best practices for communicating that unwanted materials have exceeded their maximum volumes.

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process, see the required standards at Subsections R315-262-11(a) through (d) and Sections R315-262-209 through R315-262-212.

(6) Describe its intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in Section R315-262-213, including:

(i) Procedures for conducting laboratory clean-outs, see the required standards at Subsections R315-262-213(a)(1) through (3); and

(ii) Procedures for documenting laboratory clean-outs, see the required standards at Subsection R315-262-213(a)(4).

(7) Describe its intended best practices for emergency prevention, including:

- (i) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and
- (ii) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when they exceed their expiration date and/or as they degrade; and
- (iii) Procedures to safely dispose of chemicals that become more dangerous when they exceed their expiration date and/or as they degrade; and
- (iv) Procedures for the timely characterization of unknown chemicals.

(c) An eligible academic entity shall make its Laboratory Management Plan available to laboratory workers, students, or any others at the eligible academic entity who request it.

(d) An eligible academic entity shall review and revise its Laboratory Management Plan, as needed.

**R315-262-215. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Unwanted Material that Is Not Solid or Hazardous Waste.**

(a) If an unwanted material does not meet the definition of solid waste in Section R315-261-2, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270.

(b) If an unwanted material does not meet the definition of hazardous waste in Section R315-261-3, it is no longer subject to Sections R315-262-200 through 216 or to Rules R315-260 through 266, 268, or 270, but shall be managed in compliance with any other applicable regulations and/or conditions.

**R315-262-216. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities -- Non-Laboratory Hazardous Waste Generated at an Eligible Academic Entity.**

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under Sections R315-262-200 through 216; and

(a) Remains subject to the generator requirements of Sections R315-262-11 and R315-262-15 for large quantity generators and small quantity generators, if the hazardous waste is managed in a satellite accumulation area, and all other applicable generator requirements of Rule R315-262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of Section R315-262-14 for very small quantity generators, with respect to that hazardous waste.

**R315-262-217. Appendix to Rule R315-262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions).**

U.S. EPA Forms 8700-22 and Manifest Continuation Sheet (EPA Form 8700-22A) found in appendix to 40 CFR 262, 2015 edition, are incorporated and incorporated by reference.

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

The following statement shall be included with each

Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest shall be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.

**I. Instructions for Generators  
Manifest 8700-22**

The following statement shall be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**Item 1. Generator's U.S. EPA Identification Number**

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

**Item 2. Page 1 of \_**

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

**Item 3. Emergency Response Phone Number**

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number shall:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

**Item 4. Manifest Tracking Number**

This unique tracking number shall be pre-printed on the manifest by the forms printer.

**Item 5. Generator's Mailing Address, Phone Number and Site Address**

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

**Item 6. Transporter 1 Company Name, and U.S. EPA ID Number**

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

**Item 7. Transporter 2 Company Name and U.S. EPA ID Number**

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

**Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number**

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

**Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)**

**Item 9a.** If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Item 9b.** Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

**Item 10. Containers (Number and Type)**

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I

Types of Containers

- BA = Burlap, cloth, paper, or plastic bags.
- CF = Fiber or plastic boxes, cartons, cases.
- CM = Metal boxes, cartons, cases (including roll-offs).
- CW = Wooden boxes, cartons, cases.
- CY = Cylinders.
- DF = Fiberboard or plastic drums, barrels, kegs.
- DM = Metal drums, barrels, kegs.
- DT = Dump truck.
- DW = Wooden drums, barrels, kegs.
- HG = Hopper or gondola cars.
- TC = Tank cars.
- TP = Portable tanks.
- TT = Cargo tanks (tank trucks).

**Item 11. Total Quantity**

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

**Item 12. Units of Measure (Weight/Volume)**

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II

Units of Measure

- G = Gallons (liquids only).
- K = Kilograms.
- L = Liters (liquids only).
- M = Metric Tons (1000 kilograms).
- N = Cubic Meters.
- P = Pounds.
- T = Tons (2000 pounds).
- Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

**Item 13. Waste Codes**

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes shall be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

**Item 14. Special Handling Instructions and Additional Information.**

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

**Item 15. Generator's/Officer's Certifications**

1. The generator shall read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to

applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

## II. Instructions for International Shipment Block

### Item 16. International Shipments

For export shipments, the primary exporter shall check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer shall check the import box and enter the point of entry (city and state) into the United States.

### III. Instructions for Transporters

#### Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person shall acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

## IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

### Item 18. Discrepancy

#### Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator shall note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by Subsections R315-264-72(b) and 40 CFR 265.72(b)), which is incorporated by reference in Section R315-265-1, between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in Subsection R315-261-7(b).

2. For rejected loads and residues (Subsections R315-264-72(d), (e), and (f), or CFR 265.72(d), (e), or (f)), which are incorporated by reference in Section R315-265-1, check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest.

Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste shall submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (Subsections R315-264-72(c) and CFR 265.72(c), which is incorporated by reference in Section R315-265-1).

4. Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

### Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

### Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) shall sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

### Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

### Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person shall acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues shall be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

### Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used---press down hard.

This form shall be used as a continuation sheet to U.S.

EPA Form 8700-22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page ---

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name---

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter---Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

Item 33. Transporter - Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter - Acknowledgment of Receipt of

Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person shall acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

#### **R315-262-230. Alternative Standards for Episodic Generation -- Applicability.**

Sections R315-262-230 through 233 are applicable to very small quantity generators and small quantity generators as defined in Section R315-260-10.

#### **R315-262-231. Alternative Standards for Episodic Generation -- Definitions for Sections R315-262-230 Through 233.**

(a) "Episodic event" means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

(b) "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

(c) "Unplanned episodic event" means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

#### **R315-262-232. Alternative Standards for Episodic Generation -- Conditions for a Generator Managing Hazardous Waste from an Episodic Event.**

(a) Very small quantity generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under Section R315-262-233;

(2) Notification. The very small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700-12. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour

telephone access to discuss the notification submittal or respond to an emergency in compliance with Subsection R315-262-16(b)(9)(i);

(3) EPA ID Number. The very small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12;

(4) Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) Containers. A very small quantity generator accumulating in containers shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

(A) Mark or label the tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(iii) Hazardous waste shall be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers shall be in good condition and compatible with the hazardous waste being accumulated therein. Containers shall be kept closed except to add or remove waste; and

(B) Tanks shall be in good condition and compatible with the hazardous waste accumulated therein. Tanks shall have procedures in place to prevent the overflow (e.g., be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks shall be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the

inspection.

(5) The very small quantity generator shall comply with the hazardous waste manifest provisions of Sections R315-262-20 through 27 when it sends its episodic event hazardous waste off site to a designated facility, as defined in Section R315-260-10.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in Section R315-260-10.

(7) Very small quantity generators shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

(b) Small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under Section R315-262-233;

(2) Notification. The small quantity generator shall notify the Director no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the small quantity generator shall notify the Director within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700-12. The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) EPA ID Number. The small quantity generator shall have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12; and

(4) Accumulation by small quantity generators. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) Containers. A small quantity generator accumulating episodic hazardous waste in containers shall meet the standards at Subsection R315-262-16(b)(2) and shall mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National

Fire Protection Association code 704; and

(C) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) Tanks. A small quantity generator accumulating episodic hazardous waste in tanks shall meet the standards at Subsection R315-262-16(b)(3) and shall do the following:

(A) Mark or label its tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704;

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information on site and available for inspection.

(5) The small quantity generator shall treat hazardous waste generated from an episodic event on site or manifest and ship such hazardous waste off site to a designated facility (as defined by Section R315-260-10) within sixty (60) calendar days from the start of the episodic event.

(6) The small quantity generator shall maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the designated facility (as defined by Section R315-260-10) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from the Director if the generator petitioned to conduct one additional episodic event per calendar year.

**R315-262-233 Alternative Standards for Episodic Generation -- Petition to Manage One Additional Episodic Event Per Calendar Year.**

(a) A generator may petition the Director for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Director for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Director for an additional planned episodic event in that calendar year.

(b) The petition shall include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic

event - not to exceed sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition shall be made to the Director in writing, either on paper or electronically.

(d) The generator shall retain written approval in its records for three (3) years from the date the episodic event ended.

**R315-262-250. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Applicability.**

The regulations of Sections R315-262-250 through 265 apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.

**R315-262-251. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Maintenance and Operation of Facility.**

A large quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

**R315-262-252. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Equipment.**

All areas deemed applicable by Section R315-262-250 shall be equipped with the items in Subsections R315-262-252(a) through (d) (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

**R315-262-253. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Testing and Maintenance of Equipment.**

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

**R315-262-254. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Access to Communications or Alarm System.**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded

access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Section R315-262-252.

(b) In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access, e.g., direct or unimpeded access, to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Section R315-262-252.

**R315-262-255. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Required Aisle Space.**

The large quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

**R315-262-256. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Arrangements with Local Authorities.**

(a) The large quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(c) A facility possessing 24-hour response capabilities may seek a waiver from the State Fire Marshal or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

**R315-262-260. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Purpose and Implementation of Contingency Plan.**

(a) A large quantity generator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**R315-262-261. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Content of Contingency Plan.**

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-262-260 and 265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of Rule R315-262. The generator may develop one contingency plan that meets all regulatory standards. The plan should be based on the National Response Team's Integrated Contingency Plan Guidance, "One Plan."

(c) The plan shall describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to Section R315-262-256.

(d) The plan shall list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see Section R315-262-264), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position, e.g., operations manager, shift coordinator, shift operations supervisor, as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

**R315-262-262. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Copies of Contingency Plan.**

A copy of the contingency plan and all revisions to the plan shall be maintained at the large quantity generator and:

(a) The large quantity generator shall submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be



called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan shall at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee. The quick reference guide shall include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous waste present at any one time, e.g., toxic paint wastes, spent ignitable solvent, corrosive acid;

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;

(4) A map of the facility showing where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;

(5) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(6) The locations of water supply, e.g., fire hydrant and its flow rate;

(7) The identification of on-site notification systems, e.g., a fire alarm that rings off site, smoke alarms; and

(8) The name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators shall update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at Subsection R315-262-262(a) or, as appropriate, the Local Emergency Planning Committee.

### **R315-262-263. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Amendment of Contingency Plan.**

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

### **R315-262-264. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Coordinator.**

At all times, there shall be at least one employee either on the generator's premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in Section R315-262-265. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator shall be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the

location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

### **R315-262-265. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators -- Emergency Procedures.**

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or designee when the emergency coordinator is on call) shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, using their 24-hour toll free number 800-424-8802, and the Division of Waste Management and Radiation Control at 801-536-0200 or after hours at 801-536-4123. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of the generator;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f) If the generator stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance

with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that shall be managed in accordance with all the applicable requirements and conditions for exemption in Rules R315-262, 263, and 265.

(h) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator shall submit a written report on the incident to the Director. The report shall include:

(I) Name, address, and telephone number of the generator;

(II) Date, time, and type of incident, e.g., fire, explosion;

(III) Name and quantity of material(s) involved;

(IV) The extent of injuries, if any;

(V) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VI) Estimated quantity and disposition of recovered material that resulted from the incident.

**KEY: hazardous waste, generators**  
**April 15, 2019**

**19-6-105**  
**19-6-106**

**R317. Environmental Quality, Water Quality.****R317-401. Graywater Systems.****R317-401-1. General.**

(a) This rule shall apply to the construction, installation, modification and repair of graywater systems for subsurface landscape irrigation for single-family residences.

(b) Nothing contained in this rule shall be construed to prevent the permitting local health department from:

(i) adopting stricter requirements than those contained herein;

(ii) prohibiting graywater systems; and

(iii) assessment of fees for administration of graywater systems.

(c) Graywater shall not be:

(i) applied above the land surface;

(ii) applied to vegetable gardens except where graywater is not likely to have direct contact with the edible part, whether the fruit will be processed or not;

(iii) allowed to surface; or

(iv) discharged directly into or reach any storm sewer system or any waters of the State.

(d) It shall be unlawful for any person to construct, install or modify, or cause to be constructed, installed or modified any graywater system in a building or on a given lot without first obtaining a permit to do such work from the local health department.

(e) The local health department may require the graywater system in its jurisdiction, be placed under:

(i) an umbrella of a management district for the purposes of operation, maintenance and repairs,

(ii) a third-party operation, maintenance and repair contract at the expense of the permittee with a requirement of notification by the permittee and the contractor to the local health department, of the termination of such services.

**R317-401-2. Definitions.**

(a) "Graywater" is untreated wastewater, which has not come into contact with toilet waste. Graywater includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, laundry tubs, etc., and does not include wastewater from kitchen sinks, photo lab sinks, dishwashers, garage floor drains, or other hazardous chemicals.

(b) Surfacing of graywater means the ponding, running off, or other release of graywater to or from the land surface.

(c) "The local health department" means a city-county or multi-county local health department established under Title 26A, which has been given approval by the Director to issue permits for graywater systems within its jurisdiction.

(d) "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

**R317-401-3. Administrative Requirements.**

(a) The local health department having jurisdiction must obtain approval from the Director to administer a graywater systems program, as outlined in this section, before permitting graywater systems.

(b) The local health department request for approval must include a description of its plan to properly manage these systems to protect public health. This plan must include:

(i) Documentation of:

(1) the adequacy of staff resources to manage the increased work load;

(2) the technical capability to administer the new systems including any training plans which are needed;

(3) the Local Board of Health and County Commission

support this request; and

(4) the county's legal authority to implement and enforce correction of malfunctioning systems and its commitment to exercise this authority.

(ii) An agreement to:

(1) advise the owner of the system of the type of system, and information concerning risk of failure, level of maintenance required, financial liability for repair, modification or replacement of a failed system and periodic monitoring requirements;

(2) advise the building permitting agency of the approved graywater system on the property;

(3) provide oversight of installed systems;

(4) record the existence of the system on the deed of ownership for that property;

(5) issue a renewable operating permit at a frequency not exceeding five years with inspection of the permitted systems before renewal; or, inspect annually the greater of 20 per cent of all installed system or the minimum of ten installed systems; and

(6) maintain records of all installed systems, failures, modifications, repairs and all inspections recording the condition of the system at the time of inspection such as, but not limited to, overflow, surfacing, ponding and nuisance.

**R317-401-4. Permitting or Approval Requirements.**

(a) Designer certified at Level 3, in accordance with the requirements of R317-11, shall design the graywater systems.

(b) The local health department may require the following information with or in the plot plan before a permit is issued for a graywater system:

(i) plot plan drawn to scale, completely dimensioned, showing lot lines and structures, direction and slope of the ground, location of all present or proposed retaining walls, drainage channels, water supply lines, wells, paved areas and structures on the plot, other utilities, easements, number of bedrooms and plumbing fixtures plan in each structure, location of onsite wastewater system and replacement area of the onsite wastewater system, or building sewer connecting to a public sewer, and location of the proposed graywater system;

(ii) a log of soil formations and identification of the maximum anticipated ground water level as determined by the minimum of one test hole, dug in close proximity, two feet below the bottom of the subsurface irrigation field or drip irrigation area together with a statement of types of soil based on soil classification at the proposed site. Soil and groundwater evaluations will be conducted by professionals fulfilling the requirements of R317-11;

(iii) details of construction necessary to ensure compliance with the requirements of this rule together with full description of the complete installation including installation methods, construction and materials, as required by the local health department; and

(iv) other pertinent information the local health department may deem appropriate.

(c) The installed graywater system shall be operated only after receiving a written approval or an authorization from the local health department after the local health department has made the final construction inspection.

(d) The local health department will require written operation and maintenance procedures including checklists and maintenance instructions from the designer.

(e) No graywater system, or part thereof, shall be located on any lot other than the lot which is the site of the building or structure which discharges the graywater unless, when approved by the local health department, a perpetual utility easement and right-of-way is established on an adjacent or nearby lot.

(f) Onsite wastewater systems existing or to be constructed on a given lot shall comply with the requirements of R317-4 or more restrictive local requirements. The capacity of the onsite

wastewater system, including required future areas, shall not be decreased by the existence or proposed installation of a graywater system servicing a given lot.

(g) No potable water connection will be made to the graywater system without an air gap or a reduced pressure principle backflow prevention assembly for cross connection control, in accordance with R309-105.

(h) When abandoning a graywater system,

(i) the owner of the real property on which such system is located shall render it safe by having the surge tank pumped out only in a manner approved by the health department;

(ii) the surge tank shall be filled completely with earth, sand or gravel within 30 days;

(iii) the surge tank may also be removed within 30 days, at the owner's discretion;

(iv) the approving local health department shall be notified at least 30 days before the planned abandonment.

**R317-401-5. Design of Graywater Systems.**

(a) The basis of design for a graywater system shall be as follows:

TABLE 1  
Basis of Design

Number of Bedrooms	Flow, gallons per day
Minimum two bedrooms	120
Three bedrooms	160
Each additional bedroom	40

(b) No graywater system or part thereof shall be located at any point having less than the minimum distances indicated as follows:

TABLE 2  
Separation Distances

Minimum Horizontal Distance (in feet) From	Surge Tank	Subsurface or Drip Irrigation Field
Buildings or Structures (1)	5 feet (2)	2 feet
Property line adjoining private property	5 feet	5 feet
Public Drinking Water Sources (3)	(4)	(4)
Non-public Drinking Water Sources		
Protected (grouted)source	50 feet	100 feet
Unprotected (ungrouted)source	50 feet(5)	200 feet(5)
Streams, ditches and lakes (3)	25 feet	100 feet(6)
Seepage pits	5 feet	10 feet
Absorption System and replacement area	5 feet	10 feet
Septic tank	none	5 feet
Culinary water supply line	10 feet	10 feet(7)

Footnotes:

- (1) Including porches and steps, whether covered or uncovered, but does not include carports, covered walks, driveways and similar structures.
- (2) For above ground tanks the local health department may allow less than five feet separation.
- (3) As defined in R309
- (4) Recommended separation distances will comply with the Source Water Protection requirements R309-600 and 605.
- (5) Recommended separation distance may increase at the discretion of the local health department for adequate public health protection.
- (6) Lining or enclosing watercourse or location above irrigation area may justify reduced separation at the discretion of the local health department.
- (7) For parallel construction or for crossing requires an approval of the local health department.

(c) Surge Tank

(i) Plans for surge tanks shall include dimensions, structural, bracing and connection details, and a certification of structural suitability for the intended installation from the manufacturer.

(ii) Surge tanks shall be:

(A) at least 250 gallons in volumetric capacity to provide settling of solids, accumulation of sludge and scum unless justified with a mass balance of inflow and outflow and type of distribution for irrigation;

(B) vented to the surface with a locking, gasketed access opening, or approved equivalent, to allow for inspection and cleaning;

(C) constructed of structurally durable materials to withstand all expected physical forces, and not subject to excessive corrosion or decay;

(D) watertight;

(E) anchored against overturning;

(F) installed below ground on dry, level, well compacted soil; in a dry well on compacted soil; or above ground on a level, four-inch thick concrete slab;

(G) Permanently marked showing the rated capacity, and "GRAYWATER IRRIGATION SYSTEM, DANGER - UNSAFE WATER" on the unit;

(H) provided with an overflow pipe;

(I) of diameter at least equal to that of the inlet pipe diameter;

(II) connected permanently to sanitary sewer or to septic tank; and

(III) equipped with a check valve, not a shut-off valve - to prevent backflow from sewer or septic tank.

(I) provided with a drain pipe of diameter at least equal to that of the inlet pipe diameter;

(J) provided with a vent pipe in conformance with the requirements of the International Plumbing Code; and

(K) provided with unions and fittings for all piping in conformance with the requirements of the International Plumbing Code.

(d) Valves and Piping

(i) Graywater piping discharging into a surge tank or having a direct connection to a sanitary drain or sewer piping shall be downstream of an approved water seal type trap(s) If no such trap(s) exists, an approved vented running trap shall be installed upstream of the connection to protect the building from any possible waste or sewer gases.

(ii) Vents and venting shall meet the requirements of the International Plumbing Code.

(iii) All graywater piping shall be marked or shall have a continuous tape marked with the words: DANGER - UNSAFE WATER.

(iv) All valves, including the three-way valve, shall be readily accessible.

(v) The design shall include necessary types of valves for isolation storage tank, irrigation zones and connection to a sanitary sewer or an onsite wastewater system.

**R317-401-6. Irrigation Fields.**

(a) Each irrigation zone shall have a minimum effective irrigation area for the type of soil and absorption characteristics.

(b) The area of the irrigation field shall be equal to the aggregate length of the perforated pipe sections within the irrigation zone times the width of the proposed trench. The required square footage shall be determined as follows:

TABLE 3  
Subsurface Irrigation Field Design

Soil Characteristics	Subsurface Irrigation Field area Loading, gallons of graywater per day per square foot
Coarse Sand or gravel	5
Fine Sand	4
Sandy Loam	2.5
Sandy Clay	1.6
Clay with considerable sand or gravel	1.1
Clay with sand or gravel	0.8

TABLE 4  
Drip Irrigation System Design

Soil Characteristics	Drip Irrigation System	
	Maximum emitter discharge, gallons per day	Minimum number of emitters per gallon per day of graywater
Coarse Sand or gravel	1.8	0.6
Fine Sand	1.4	0.7
Sandy Loam	1.2	0.9
Sandy Clay	0.9	1.1
Clay with considerable sand or gravel	0.6	1.6
Clay with sand or gravel	0.5	2.0

(c) No irrigation point shall be within two vertical feet of the maximum groundwater table. The applicant shall supply evidence of ground water depth to the satisfaction of the local health department.

(d) Subsurface drip irrigation system.

(i) Minimum 140 mesh (115 micron) filter with a capacity of 25 gallons per minute, or equivalent filtration, sized appropriately to maintain the filtration rate, shall be used.

(ii) The filter backwash and flush discharge shall be captured, contained and disposed of to the sewer system, septic tank, or, with approval of the local health department, in a dry well sized to accept all the backwash and flush discharge water. Filter backwash water and flush water shall not be used for any purpose. Sanitary procedures shall be followed when handling filter backwash and flush discharge of graywater.

(iii) Emitters recommended by the manufacturer shall be resistant to root intrusion, and suitable for subsurface and graywater use.

(iv) Each irrigation zone shall be designed to include no less than the number of emitters specified in this rule.

(v) Minimum spacing between emitters should be 14 inches in any direction, or as recommended by the manufacturer.

(vi) The system design shall provide user controls, such as valves, switches, timers, and other controllers as appropriate, to rotate the distribution of graywater between irrigation zones.

(vii) All drip irrigation supply lines shall be:

(A) polyethylene tubing or PVC class 200 pipe or better and schedule 40 fittings;

(B) With solvent-cemented joints, inspected and pressure tested at 40 pounds per square inch and shown to be drip tight for five minutes, before burial; and

(C) buried at a minimum depth of six inches. Drip feeder lines can be polyethylene or flexible PVC tubing and shall be covered to a minimum depth of six inches.

(viii) Where pressure at the discharge side of the pump exceeds 20 pounds per square inch, a pressure-reducing valve able to maintain downstream pressure no greater than 20 pounds per square inch shall be installed downstream from the pump and before any emission device.

(ix) Each irrigation zone shall include a flush valve/anti-siphon valve to prevent back siphonage of water and soil.

(e) Subsurface Irrigation Field

(i) Perforated sections shall be a minimum three-inch diameter and shall be constructed of perforated high-density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other approved materials, provided that sufficient openings are available for distribution of the graywater in the trench area. Material, construction and perforation of the piping shall be in compliance with the requirements of the International Plumbing Code.

(ii) Clean stone, gravel, or similar filter material acceptable to the local health department, and varying in size from 3/4 inch to 2 1/2 inches, shall be placed in the trench to the depth and

grade required by this section. Perforated sections shall be laid on the filter material. The perforated sections shall then be covered with filter material to the minimum depth required by this section. The filter material shall then be covered with landscape filter fabric or similar porous material to prevent closure of voids with earth backfill.

(iii) No earth backfill shall be placed over the filter material cover until after inspection and approval of the local health department.

(iv) Subsurface Irrigation fields shall be constructed as follows:

TABLE 5  
Subsurface Irrigation Field Construction Details

Description	Minimum	Maximum
Number of drain lines per subsurface irrigation zone	one	---
Length of each perforated line, feet	---	100
Bottom width of trench, inches	6	18
Total depth of trench, inches	12	---
Spacing of lines, center to center, feet	4	---
Depth of earth cover on top of gravel, inches	4	---
Depth of filter material cover over lines, inches	2	---
Depth of filter material beneath lines, inches	3	---
Grade of perforated lines, Inches per 100 feet	Level	4

(f) Construction, Inspection and Testing

(i) Installation shall conform to the equipment and installation methods described in the approved plans.

(ii) The manufacturer of all system components shall be properly identified.

(iii) Surge tanks shall be filled with water to the overflow line prior to and during construction inspection. All seams and joints shall be left exposed and the tank shall remain watertight.

(iv) The irrigation field shall be installed in the area which has soils similar to the soils which have been evaluated, and has absorption rate corresponding to the given soil classification.

(v) A graywater stub-out may be allowed for future construction, provided it is capped prior to the connection to the installed irrigation lines and landscaping. Stub-out shall be permanently marked: GRAYWATER STUB-OUT, DANGER UNSAFE WATER.

(vi) A flow test shall be performed throughout the system, from surge tank to the point of graywater irrigation. All lines and components shall be watertight.

**KEY: wastewater, graywater, drip irrigation**  
**September 24, 2013**  
**Notice of Continuation April 8, 2019**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-7A. Medicaid Certification of New Nursing Facilities.**

**R414-7A-1. Administrative Proceedings.**

Adjudicative proceedings for decisions by the Division of Medicaid and Health Financing, made pursuant to Section 26-18-504, are informal and conducted in accordance with Rule R410-14.

**KEY: Medicaid**

**June 3, 2005**

**Notice of Continuation May 30, 2014**

**26-1-5**

**26-18-504(2)**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-14A. Hospice Care.**

**R414-14A-1. Introduction and Authority.**

This rule is authorized by Sections 26-1-5 and 26-18-3, and Pub L. No. 111 148 of the Affordable Care Act. It implements Medicaid hospice care services as found in 42 U.S.C. 1396d(o).

**R414-14A-2. Definitions.**

The definitions in Rule R414-1 apply to this rule. In addition:

- (1) "Attending physician" means a physician who:
  - (a) is a doctor of medicine or osteopathy; and
  - (b) is identified by the client at the time he or she elects to receive hospice care as having the most significant role in the determination and delivery of the client's medical care.
- (2) "Cap period" means the 12-month period ending October 31 used in the application of the cap on reimbursement for inpatient hospice care as described in Subsection R414-14A-23(5).
- (3) "Employee" means an employee of the hospice provider or, if the hospice provider is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" includes a volunteer under the direction of the hospice provider.
- (4) "Hospice care" means care provided to terminally ill clients by a hospice provider.
- (5) "Hospice provider" means a provider that is licensed under the provisions of Rule R432-750 and is primarily engaged in providing care to terminally ill individuals.
- (6) "Physician" means a doctor of medicine or osteopathy who is licensed by the state of Utah.
- (7) "Representative" means an individual who has been authorized under state law to make health care decisions, including initiating, continuing, refusing, or terminating medical treatments for a client who cannot make health care decisions.
- (8) "Terminally ill" means the client has a medical prognosis to live no more than six months if the illness runs its normal course.
- (9) "Adult" means a hospice client who is at least 21 years of age.

**R414-14A-3. Client Eligibility Requirements.**

- (1) A client who is terminally ill may obtain hospice care pursuant to this rule.
- (2) A client's certification of a terminal condition required for hospice eligibility must be based on a face-to-face assessment by a physician conducted no more than 90 days prior to the date of enrollment.
- (3) A client dually enrolled in Medicare and Medicaid must elect the hospice benefit for both Medicare and Medicaid. The client must receive hospice coverage under Medicare. Election for the Medicaid hospice benefit provides the client coverage for Medicare co-insurance and coverage for room and board expenses while a resident of a Medicare-certified nursing facility, intermediate care facility for people with an intellectual disability (ICF/ID), or freestanding hospice facility.
- (4) Primary diagnoses of "debility" and "adult failure to thrive" do not meet eligibility criteria for Medicaid hospice care if the patient does not have a least one other more definitive co-occurring principle terminal diagnosis.

**R414-14A-4. Program Access Requirements.**

- (1) Hospice care may be provided only by a hospice provider licensed by the Department, that is Medicare certified in accordance with 42 CFR Part 418, and that is a Medicaid provider.
- (2) A hospice provider must have a valid Medicaid

provider agreement in place prior to initiating hospice care for Medicaid clients. The Medicaid provider agreement is effective on the date a Medicaid provider application is received in the Department and may not be made retroactive to an earlier date, including an earlier effective date of Medicare hospice certification.

(3) At the time of a change of ownership, the previous owner's provider agreement terminates as of the effective date of the change of ownership.

(4) The Department accepts all waivers granted to hospice agencies by the Centers for Medicare and Medicaid Services as part of the Medicare certification process.

(5) Hospice agencies participating in the Medicaid program shall provide hospice care in accordance with the requirements of 42 CFR Part 418.

**R414-14A-5. Service Coverage.**

Hospice care categories eligible for Medicaid reimbursement are the following:

- (1) "Routine home care day" is a day in which a client who has elected to receive hospice care is at home and is not receiving continuous home care as defined in Subsection R414-14A-5(2). For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.
- (2) "Continuous home care day" is a day in which a client who has elected to receive hospice care receives a minimum of eight aggregate hours of care from the hospice provider during a 24-hour day, which begins and ends at midnight. The eight aggregate hours of care must be predominately nursing care provided by either a registered nurse or licensed practical nurse. Continuous home care is only furnished during brief periods of crisis in which a patient requires continuous care that is primarily nursing care to achieve palliation or management of acute medical symptoms. Extended stay residents of nursing facilities are not eligible for continuous home care day.
- (3) "Inpatient respite care day" is a day in which the client who has elected hospice care receives short-term inpatient care when necessary to relieve family members or other persons caring for the client at home.
- (4) "General inpatient care day" is a day in which a client who has elected hospice care receives general inpatient care for pain control or acute or chronic symptom management that cannot be managed in a home or other outpatient setting. General inpatient care may be provided in a hospice inpatient unit, a hospital, or a nursing facility.
- (5) "Room and Board" is medication administration, performance of personal care, social activities, routine and therapeutic dietary services, meal service including direct feeding assistance, maintaining the cleanliness of the client's room, assistance with activities of daily living, durable equipment, prescribed therapies, and all other services unrelated to care associated with the terminal illness that would be covered under the Medicaid State Plan nursing facility benefit.

**R414-14A-6. Hospice Election.**

(1) A client who meets the eligibility requirement for Medicaid hospice must file an election statement with a particular hospice. If the client cannot cognitively make informed health care decisions or is under 18 years of age, the client's legally authorized representative may file the election statement.

(2) Each hospice provider designs and prints his own election statement. The election statement must include the following:

- (a) identification of the particular hospice that will provide care to the client;
- (b) the client's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the

client's terminal illness;

(c) for adult clients, acknowledgment that the client waives certain Medicaid services as set forth in Section R414-14A-9;

(d) acknowledgment that the client or representative may revoke the election of the hospice benefit at any time in the future and therefore become eligible for Medicaid services waived at the time of hospice election as set forth in Section R414-14A-8; and

(e) the signature of the client or representative.

(3) The effective date of the election may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement

(4) An election to receive hospice care remains effective through the initial election period and through the subsequent election periods without a break in care as long as the client:

(a) remains in the care of a hospice;

(b) does not revoke the election; and

(c) is not discharged from the hospice.

(5) The hospice provider must notify the Department at the time a Medicaid client selects the hospice benefit, including selecting the hospice provider under a change of designated hospice. The notification must include a copy of the hospice election statement and the physician's certification of terminal illness for hospice care. Authorization for reimbursement of hospice care begins no earlier than the date notification is received by the Department for an eligible Medicaid client, except as provided in Section R414-14A-20.

(6) Subject to the conditions set forth in this rule, a client may elect to receive hospice care during one or more of the following election periods:

(a) an initial 90-day period;

(b) a subsequent 90-day period; or

(c) an unlimited number of subsequent 60-day periods.

(7) The Department may only grant prior authorization for hospice care in alignment with the election periods defined in Subsection R414-14A-6(6).

#### **R414-14A-7. Change in Hospice Provider.**

(1) A client or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(2) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(3) To change the designation of hospice provider, the client must file, with the hospice provider from which care has been received and with the newly designated hospice provider, a statement that includes the following information:

(a) the name of the hospice provider from which the client has received care;

(b) the name of the hospice provider from which the client plans to receive care; and

(c) the date the change is to be effective.

(4) The client must file the change on or before the effective date.

#### **R414-14A-8. Revocation and Re-election of Hospice Services.**

(1) A client or legal representative may voluntarily revoke the client's election of hospice care at any time during an election period.

(2) To revoke the election of hospice care, the client or representative must file a statement with the hospice provider that includes the following information:

(a) a signed statement that the client or representative revokes the client's election for Medicaid coverage of hospice care.

(b) the date that the revocation is to be effective, which may not be earlier than the date that the revocation is made; and

(c) an acknowledgment signed by the patient or the

patient's representative that the patient will forfeit Medicaid hospice coverage for any remaining days in that election period.

(3) Upon revocation of the election of Medicaid coverage of hospice care for a particular election period, a client:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage for the benefits waived under Section R414-14A-9 (for adult clients); and

(c) may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

(4) If an election has been revoked, the client or his representative may at any time file an election in accordance with this rule for any other election period that is still available to the client.

(5) Hospice providers may not encourage adult clients to temporarily revoke hospice services solely for the purpose of avoiding financial responsibility for Medicaid services that have been waived at the time of hospice election as described in Section R414-14A-9.

(6) Hospice providers must send notification to the Department within ten calendar days that a client has revoked hospice benefits. Notification must include a copy of the revocation statement signed by the client or the client's legal representative.

#### **R414-14A-9. Rights Waived to Some Medicaid Services for Adult Clients.**

(1) For the duration of an election for hospice care, an adult client waives all rights to Medicaid for the following services:

(a) hospice care provided by a hospice other than the hospice designated by the client, unless provided under arrangements made by the designated hospice; and

(b) any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or are duplicative of hospice care except for services:

(i) provided by the designated hospice;

(ii) provided by another hospice under arrangements made by the designated hospice; and

(iii) provided by the client's attending physician if the services provided are not otherwise covered by the payment made for hospice care.

(2) Medicaid services for illnesses or conditions not related to the client's terminal illness are not covered through the hospice program but are covered when provided by the appropriate provider.

#### **R414-14A-10. Concurrent Care for Clients Under 21 Years of Age.**

(1) For the duration of the election of hospice care, clients under 21 years of age may only receive hospice care which is provided by the designated hospice, or that has been provided under arrangements made by the designated hospice.

(2) Clients under 21 years of age who elect to receive Medicaid hospice care may also receive concurrent Medicaid State Plan treatment for the terminal illness and other related conditions.

(3) For life prolonging treatment rendered to clients under 21 years of age, Medicaid shall reimburse the appropriate Medicaid enrolled medical care providers directly through the usual and customary Medicaid billing procedures. Hospice providers are not responsible to reimburse medical care providers for life prolonging treatment rendered to hospice clients who are under 21 years of age.

(4) Each pediatric hospice provider shall develop a training curriculum to ensure that the hospice's interdisciplinary team members, including volunteers, are adequately trained to provide hospice care to clients who are under 21 years of age.



All staff members and volunteers who provide pediatric hospice care must receive the training before they provide hospice care services, and at least annually thereafter. The training shall include the following pediatric specific elements:

- (a) Growth and development;
  - (b) Pediatric pain and symptom management;
  - (c) Loss, grief and bereavement for pediatric families and the child;
  - (d) Communication with family, community and interdisciplinary team;
  - (e) Psycho-social and spiritual care of children;
  - (f) Coordination of care with the child's community.
- (5) For pediatric care, the Hospice Program shall adopt the National Hospice and Palliative Care Organization's (NHPCO) Standards for Hospice Programs.

**R414-14A-11. Notice of Hospice Care in a Nursing Facility, ICF/ID, or Freestanding Inpatient Hospice Facility.**

(1) The hospice provider must notify the Department at the time a Medicaid client residing in a Medicare certified nursing facility, a Medicaid-certified ICF/ID, or a Medicare freestanding inpatient hospice facility elects the Medicaid hospice benefit or at the time a Medicaid client who has elected the Medicaid hospice benefit is admitted to a Medicare certified nursing facility, a Medicaid certified ICF/ID, or a Medicare freestanding inpatient hospice facility.

(2) The notification must include a prognosis of the time the client will require skilled nursing facility services under the hospice benefit.

(3) Except as provided in Section R414-14A-20, reimbursement for room and board begins no earlier than the date the hospice provider notifies the Department that the client has elected the Medicaid hospice benefit.

**R414-14A-12. Notice of Independent Attending Physician.**

The hospice provider must notify the Department at the time a Medicaid client designates an attending physician who is not a hospice employee.

**R414-14A-13. Extended Hospice Care.**

(1) Adult patients who accumulate 12 or more consecutive months of hospice benefits are subject to an independent utilization review by a physician who is not affiliated with the hospice agency. Independent reviews are subsequently required every 12 months thereafter if the patient continues to receive extended hospice care. 12 consecutive months means 12 months in a row wherein a hospice provides Medicaid hospice care during any portion of each month.

(2) If Medicare determines that a patient is no longer eligible for Medicare reimbursement for hospice services, the patient will no longer be eligible for Medicaid reimbursement for hospice services. Providers must immediately notify Medicaid upon learning of Medicare's determination. Medicaid reimbursement for hospice services will cease the day after Medicare notifies the hospice provider that the client is no longer eligible for hospice care.

**R414-14A-14. Provider Initiated Discharge from Hospice Care.**

(1) The hospice provider may not initiate discharge of a patient from hospice care except in the following circumstances:

- (a) the patient moves out of the hospice provider's geographic service area or transfers to another hospice provider by choice;
- (b) the hospice determines that the patient is no longer terminally ill; or
- (c) the hospice provider determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's behavior (or the behavior of other persons in

the patient's home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired.

(2) The hospice provider must carry out the following activities before it seeks to discharge a patient for cause:

- (a) advise the patient that a discharge for cause is being considered;
- (b) make a diligent effort to resolve the problem that the patient's behavior or situation presents;
- (c) ascertain that the discharge is not due to the patient's use of necessary hospice services; and
- (d) document the problem and efforts to resolve the problem in the patient's medical record.

(3) Before discharging a patient for any reason listed in Subsection R414-14A-14(1), the hospice provider must obtain a physician's written discharge order from the hospice provider's medical director. If a patient also has an attending physician, the hospice provider must consult the physician before discharge and the attending physician must include the review and decision in the discharge documentation.

(4) A client, upon discharge from the hospice during a particular election period, for reasons other than immediate transfer to another hospice:

- (a) is no longer covered under Medicaid for hospice care;
- (b) resumes Medicaid coverage of the benefits waived during the hospice coverage period; (for adult clients); and
- (c) may at any time elect to receive hospice care if the client is again eligible to receive the benefit in the future.

(5) The hospice provider must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change if that patient cannot continue to be certified as terminally ill. The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because the patient is no longer terminally ill.

**R414-14A-15. Hospice Room and Board Service.**

If a client residing in a nursing facility, ICF/ID or a freestanding hospice inpatient unit elects hospice care, the hospice provider and the facility must have a written agreement under which the total care of the individual must be specified in a comprehensive service plan, the hospice provider is responsible for the professional management of the client's hospice care, and the facility agrees to provide room and board and services unrelated to the care of the terminal condition to the client. The agreement must include:

(1) identification of the services to be provided by each party and the method of care coordination to assure that all services are consistent with the hospice approach to care and are organized to achieve the outcomes defined by the hospice plan of care;

(2) a stipulation that Medicaid services may be provided only with the express authorization of the hospice;

(3) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice provider;

(4) the delineation of the roles of the hospice provider and the facility in the admission process; needs assessment process, and the interdisciplinary team care conference and service planning process;

(5) requirements for documenting that services are furnished in accordance with the agreement;

(6) the qualifications of the personnel providing the services; and

(7) the billing and reimbursement process by which the nursing facility will bill the hospice provider for room and board and receive payment from the hospice provider.

(8) In cases in which nursing facility residents revoke their hospice benefits, it is the responsibility of the hospice provider

to notify the nursing facility of the revocation. The notice must be in writing and the hospice provider must provide it to the nursing facility on or before the revocation date.

**R414-14A-16. In Home Physician Services.**

In-home physician visits by the attending physician are authorized for hospice clients if the attending physician determines that direct management of the client in the home setting is necessary to achieve the goals associated with a hospice approach to care.

**R414-14A-17. Continuous Home Care.**

When the hospice provider determines that a patient requires at least eight hours of primarily nursing care in order to manage an acute medical crisis, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary and were in compliance with an established plan of care in order to meet a particular crisis situation. Continuous home care is a covered benefit only as necessary to maintain the terminally ill client at home.

**R414-14A-18. General Inpatient Care.**

(1) General inpatient care is authorized without prior authorization for an initial ten calendar day length of stay. Prior authorization is required for any additional general inpatient care days during the same stay to verify that the client's needs meet the requirements for general inpatient care. If a hospice provider requests additional days, the subsequent requests are subject to clinical review and approval by qualified Department staff.

(2) General inpatient care days may not be used due to the breakdown of the primary care giving living arrangements or the collapse of other sources of support for the recipient.

(3) Prior authorization for additional days beyond the initial ten calendar day stay must be obtained before the hospice care is provided, except as allowed in Section R414-14A-20.

**R414-14A-19. Inpatient Respite Care.**

When the hospice provider determines that a patient requires a short-term inpatient respite stay in order to relieve the family members or other persons caring for the client at home, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary to relieve a particular caregiver situation. Inpatient respite care may not be reimbursed for more than five consecutive days at a time. Inpatient respite care may not be reimbursed for a patient residing in a nursing facility, ICF/ID, or freestanding hospice inpatient unit.

**R414-14A-20. Notification and Prior Authorization Grace Periods.**

(1) If a new patient is already Medicaid eligible upon admission to hospice care, the hospice provider must submit a prior authorization request form to the Department in order to receive reimbursement for hospice services it renders, except in the following circumstances:

(a) During weekend, holidays, and after regular Department business hours, a hospice provider may begin service to a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a grace period up to ten calendar days before notifying the Department;

(b) Before the end of the ten calendar day grace period, the hospice provider must complete and submit the prior authorization request form to the Department in order to receive reimbursement for hospice services it renders;

(c) If the hospice provider does not submit the prior authorization request form timely, the Department will not

reimburse the provider for the care that it renders before the date that the form is received.

(d) The hospice provider must complete and submit with the prior authorization request, the form for independent physician review when an adult patient reaches 12 consecutive months in hospice care. The Department shall deny the prior authorization request if the provider does not include this form with the other required documents, or if this form does not indicate the patient meets ongoing eligibility criteria for Medicaid hospice care.

**R414-14A-21. Post-Payment for Services Provided While in Medicaid-Pending Status.**

(1) If a new client is not Medicaid eligible upon admission to hospice services but becomes Medicaid eligible at a later date, the Department will reimburse a hospice provider retroactively to allow the hospice eligibility date to coincide with the client's Medicaid eligibility date if:

(a) the Department determines that the client met Medicaid eligibility requirements at the time the service was provided;

(b) the hospice care met the prior authorization criteria at the time of delivery; and

(c) the hospice provider reimburses the Department for care related to the client's terminal illness delivered by other Medicaid providers during the retroactive period.

(2) The hospice provider must provide a copy of the initial care plan and any other documentation to the Department adequate to demonstrate the hospice care met prior authorization criteria at the time of delivery.

**R414-14A-22. Hospice Care Reimbursement.**

(1) The Department shall provide payment for hospice care in accordance with the methodology set forth in the Utah Medicaid State Plan.

(2) A hospice provider may not charge a Medicaid client for a service that the client is entitled to receive under Medicaid.

(3) Medicaid reimbursement to a hospice provider for services provided during a cap period is limited to the cap amount specified in Subsection R414-14A-23(5).

(4) Medicaid does not apply the aggregate caps used by Medicare.

(5) The Department provides payment for hospice care on the basis of the geographic location where the service is provided as described in the Medicaid State Plan.

(6) Routine home care, continuous home care, general inpatient care, inpatient respite care services, and hospice room and board, are reimbursable to the hospice provider only.

(7) Hospice general inpatient care and inpatient respite care are not reimbursed by Medicaid for services provided in a Veterans Administration hospital or military hospital.

**R414-14A-23. Payment for Hospice Care Categories.**

(1) The Department establishes payment amounts for the following categories:

- (a) Routine home care.
- (b) Continuous home care.
- (c) Inpatient respite care.
- (d) General inpatient care.
- (e) Room and Board service.

(2) The Department reimburses the hospice provider at the appropriate payment amount for each day for which an eligible Medicaid recipient is under the hospice's care.

(3) The Medicaid reimbursement covers the same services and amounts covered by the equivalent Medicare reimbursement rate for comparable service categories.

(4) The Department makes payment according to the following procedures:

(a) Payment is made to the hospice for each day during which the client is eligible and under the care of the hospice,

regardless of the amount of services furnished on any given day.

(b) Payment is made for only one of the categories of hospice care described in Subsection R414-14A-23(1) for any particular day.

(c) On any day in which the client is not an inpatient, the Department pays the hospice provider the routine home care rate, unless the client receives continuous home care as provided in Subsection R414-14A-5(2) for a period of at least eight hours. In that case, the Department pays a portion of the continuous home care day rate in accordance with Subsection R414-14A-23(4)(d).

(d) The hospice payment on a continuous care day varies depending on the number of hours of continuous services provided. The number of hours of continuous care provided during a continuous home care day is multiplied by the hourly rate to yield the continuous home care payment for that day. A minimum of eight hours of licensed nursing care must be furnished on a particular day to qualify for the continuous home care rate.

(e) Subject to the limitations described in Subsection R414-14A-23(5), on any day on which the client is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the client is discharged. For the day of discharge, the appropriate home care rate is paid unless the client dies as an inpatient. In the case where the client dies as an inpatient, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than five days at a time.

(5) Payment for inpatient care is limited as follows:

(a) The total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicaid clients not exceed 20 % of the total days for which these clients had elected hospice care. Clients afflicted with AIDS are excluded when calculating inpatient days. For a client who is under 21 years of age, an inpatient stay in a hospital for the purpose of receiving life prolonging treatment for the terminal illness is not counted toward the cap on reimbursement for inpatient hospice care.

(b) At the end of a cap period, the Department calculates a limitation on payment for inpatient care for each hospice to ensure that Medicaid payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicaid clients by the hospice.

(c) If the number of days of inpatient care furnished to Medicaid clients is equal to or less than 20% of the total days of hospice care to Medicaid clients, no adjustment is necessary.

(d) If the number of days of inpatient care furnished to Medicaid clients exceeds 20% of the total days of hospice care to Medicaid clients, the total payment for inpatient care is determined in accordance with the procedures specified in Subsection R414-14A-23(5)(e). That amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice.

(e) If a hospice exceeds the number of inpatient care days described in Subsection R414-14A-23(5)(d), the total payment for inpatient care is determined as follows:

(i) Calculate the ratio of the maximum number of allowable inpatient days to the actual number of inpatient care days furnished by the hospice to Medicaid clients.

(ii) Multiply this ratio by the total reimbursement for inpatient care made by the Department.

(iii) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(iv) Sum the amounts calculated in Subsection R414-14A-23(5)(e)(ii) and (iii).

(6) The hospice provider may request an exception to the inpatient care payment limitation if the hospice provider demonstrates the volume of Medicaid enrollees during the cap period was insufficient to reasonably achieve the required 20% ratio.

#### **R414-14A-24. Payment for Physician Services.**

(1) The following services performed by hospice physicians are included in the rates described in Sections R414-14A-22 and 23:

(a) General supervisory services of the medical director.

(b) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(2) For services not described in Subsection R414-14A-24(1), direct care services related to the terminal illness or a related condition provided by hospice physicians are reimbursed according to the Medicaid reimbursement fee schedule for physician services. Services furnished voluntarily by physicians are not reimbursable.

(3) Services of the client's attending physician, including in-home services, are reimbursed according to the Medicaid fee schedule for State Plan physician services. Services furnished voluntarily by physicians are not reimbursable.

#### **R414-14A-25. Hospice Payment Covers Special Modalities.**

No additional Medicaid payment will be made for chemotherapy, radiation therapy, and other special modalities of care for palliative purposes regardless of the cost of the services.

#### **R414-14A-26. Payment for Nursing Facility, ICF/ID, and Freestanding Inpatient Hospice Unit Room and Board.**

(1) For clients in a nursing facility, ICF/ID, or a freestanding hospice inpatient unit who elect to receive hospice care from a Medicaid enrolled hospice provider, Medicaid will pay the hospice provider an additional per diem for routine home care services to cover the cost of room and board in the facility. For nursing facilities and ICFs/ID, the room and board rate is 95 % of the amount that the Department would have paid to the nursing facility or ICF/ID provider for that client if the client had not elected to receive hospice care. For freestanding hospice inpatient facilities, the room and board rate is 95% of the statewide average paid by Medicaid for nursing facility services.

(a) For clients under 21 years of age, the room and board rate is 100% of the amount that the Department would have paid to the nursing facility or ICF/ID for that client if the client had not elected to receive hospice care.

(2) The Department shall reimburse the hospice provider for room and board. Upon receiving payment for room and board, the hospice provider shall reimburse the nursing facility. The reimbursement is payment in full for the services described in Section R414-14A-15. The facility cannot bill Medicaid separately.

(3) If a hospice enrollee in a nursing facility, ICF/ID, or a freestanding hospice inpatient unit has a monetary obligation to contribute to his cost of care in the facility, the facility must collect and retain the contribution. The hospice must reimburse the facility the reduced amount received from Medicaid directly or from a Medicaid Health Plan.

#### **R414-14A-27. Limitation on Liability for Certain Hospice Coverage Denials.**

If the hospice provider or the Department determines that a client is not terminally ill while receiving hospice care under this rule, the client is not responsible to reimburse the Department. If the Department denies reimbursement to the hospice provider, the hospice provider may not seek

reimbursement from the client.

**R414-14A-28. Medicaid Health Plans and Hospice.**

(1) If a Medicaid-only client is enrolled in a Medicaid health plan, the hospice selected by the client must have a contract with the health plan. The health plan is responsible to reimburse the hospice for hospice care. The Department will not directly reimburse a hospice provider for a Medicaid-only client covered by a health plan.

(2) If a Medicaid-only client enrolled in a health plan elects hospice care before being admitted to a nursing facility, ICF/ID, or a freestanding hospice inpatient unit, the health plan is responsible to reimburse the hospice provider for both the hospice care and the room and board until the client is disenrolled from the health plan by the Department. At the point the health plan determines that the enrollee will require care in the nursing facility for greater than 30 days, the health plan will notify the Department of the prognosis of extended nursing facility services. The Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities.

(3) If a hospice enrollee is covered by Medicare for hospice care, the Medicaid health plan is responsible for the health plan's payment rate less any amount paid by Medicare and other payors. The health plan is responsible for payment even if the Medicare covered service is rendered by an out-of-plan provider or was not authorized by the health plan.

(4) The health plan is responsible for room and board expenses of a hospice enrollee receiving Medicare hospice care while the client is a resident of a Medicare-certified nursing facility, ICF/ID, or freestanding hospice facility until the client is disenrolled from the health plan by the Department. On the 31st day, the client is disenrolled from the health plan and enrolled in the Medicaid fee-for-service hospice program. At the point the Department determines that the enrollee will require care in the nursing facility for greater than 30 days, the Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities. The room and board expenses will be set in accordance with Section R414-14A-26.

(5) The hospice provider is responsible for determining if an applicant for hospice care is covered by a Medicaid health plan prior to enrolling the client, for coordinating services and reimbursement with the health plan during the period the client is receiving the hospice benefit, and for notifying the health plan when the client disenrolls from the hospice benefit.

**R414-14A-29. Marketing by Hospice Providers.**

Hospice providers may not engage in unsolicited direct marketing to prospective clients. Marketing strategies shall remain limited to mass outreach and advertisements, except when a prospective client or legal representative explicitly requests information from a particular hospice provider. Hospice providers shall refrain from offering incentives or other enticements to persuade a prospective client to choose that provider for hospice care.

**R414-14A-30. Medicaid 1915c HCBS Waivers and Hospice.**

(1) For hospice enrollees covered by a Medicaid 1915c Home and Community-Based Services Waiver, hospice providers shall provide medically necessary care that is directly related to the patient's terminal illness.

(2) The waiver program may continue to provide services that are:

- (a) unrelated to the client's terminal illness and;
- (b) assessed by the waiver program as necessary to maintain safe residence in a home or community-based setting

in accordance with waiver requirements.

(3) The waiver case management agency and the hospice case management agency shall meet together upon commencement of hospice services to develop a coordinated plan of care that clearly defines the roles and responsibilities of each program.

**KEY: Medicaid**

**April 7, 2015**

**Notice of Continuation April 8, 2019**

**26-1-4.1**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.****R414-49-1. Introduction.**

The Medicaid Dental Program provides a scope of dental services for Medicaid recipients in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

**R414-49-2. Definitions.**

In addition to the definitions in Rule R414-1 and the Utah Medicaid Provider Manual, Section I: General Information, the following definitions apply to this rule:

(a) "Anterior tooth" means tooth numbers 6 through 11; 22 through 27; C through H; and M through R.

(b) "Dental services" whether furnished in the office, a hospital, a skilled nursing facility, or elsewhere, means covered services performed within the scope of the Medicaid enrolled dental provider's license as defined in Title 58, Occupations and Professions.

(c) "Posterior tooth" means tooth numbers 1 through 5; 12 through 21; 28 through 32; A through B; I through L; and S through T.

**R414-49-3. Early and Periodic Screening, Diagnostic and Treatment (EPSDT).**

This section defines the scope of dental services available to members who are eligible under the EPSDT program, and includes comprehensive and preventive health care services.

**(1) Program Access Requirements.**

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

**(2) Coverage and Limitations.**

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;

(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(d) Fixed bridges or pontics;

(e) All types of dental implants;

(f) Tooth transplantation;

(g) Ridge augmentation;

(h) Osteotomies;

(i) Vestibuloplasty;

(j) Alveoloplasty;

(k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(m) Procedures such as arthroscopy, meniscectomy, or condylectomy;

(n) Nitrous oxide analgesia;

(o) House calls;

(p) Consultation or second opinions not requested by Medicaid;

(q) Services provided without prior authorization;

(r) General anesthesia for removal of an erupted tooth;

(s) Oral sedation for behavior management;

(t) Temporary dentures or temporary stayplate partial dentures;

(u) Limited orthodontic treatment, including removable appliance therapies;

(v) Removable appliances in conjunction with fixed banded treatment; and

(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

**(4) Dental Spend-Ups.**

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings;

(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or

(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

**R414-49-4. Pregnant Members.**

This section defines the scope of dental services available to pregnant members who are eligible for Traditional Medicaid. Dental services extend for a 60-day period after the pregnancy ends and any remaining days in the month in which the 60 days lapse.

**(1) Program Access Requirements.**

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

**(2) Coverage and Limitations.**

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the

same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

- (a) Composite resin fillings on posterior teeth;
- (b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;
- (c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;
- (d) Fixed bridges or pontics;
- (e) All types of dental implants;
- (f) Tooth transplantation;
- (g) Ridge augmentation;
- (h) Osteotomies;
- (i) Vestibuloplasty;
- (j) Alveoloplasty;
- (k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;
- (l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
- (m) Procedures such as arthroscopy, meniscectomy, or condylectomy;
- (n) Nitrous oxide analgesia;
- (o) House calls;
- (p) Consultation or second opinions not requested by Medicaid;
- (q) Services provided without prior authorization;
- (r) General anesthesia for removal of an erupted tooth;
- (s) Oral sedation for behavior management;
- (t) Temporary dentures or temporary stayplate partial dentures;
- (u) Limited orthodontic treatment, including removable appliance therapies;
- (v) Removable appliances in conjunction with fixed banded treatment; and
- (w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

- (i) Covered amalgam fillings to non-covered composite resin fillings;
- (ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or
- (iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

#### **R414-49-5. Blind or Disabled Members.**

This section defines the scope of dental services available to blind or disabled members eligible for Traditional Medicaid who are 18 years of age or older, as defined in Subsection 1614(a) of the Social Security Act. Services are authorized by

a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

- (a) Composite resin fillings on posterior teeth;
- (b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;
- (c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;
- (d) Fixed bridges or pontics;
- (e) All types of dental implants;
- (f) Tooth transplantation;
- (g) Ridge augmentation;
- (h) Osteotomies;
- (i) Vestibuloplasty;
- (j) Alveoloplasty;
- (k) Occlusal appliances, habit control appliances, or interceptive orthodontic treatment;
- (l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
- (m) Procedures such as arthroscopy, meniscectomy, or condylectomy;
- (n) Nitrous oxide analgesia;
- (o) House calls;
- (p) Consultation or second opinions not requested by Medicaid;

- (q) Services provided without prior authorization;
- (r) General anesthesia for removal of an erupted tooth;
- (s) Oral sedation for behavior management;
- (t) Temporary dentures or temporary stayplate partial dentures;

(u) Limited orthodontic treatment, including removable appliance therapies;

(v) Removable appliances in conjunction with fixed

banded treatment; and

(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings;

(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or

(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).

**R414-49-6. Targeted Adult Medicaid (TAM).**

This section defines the scope of dental services available to eligible Targeted Adult Medicaid members who are actively receiving treatment in a substance abuse treatment program as defined in Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD).

(c) Before performing any dental services, SOD shall obtain verification of active treatment for substance use disorder (SUD) from the substance abuse treatment program. The SOD shall then submit an SUD verification form to Medicaid for each eligible TAM member. The SUD verification form is available in "All Providers General Attachments" on the Utah Medicaid website at <https://medicaid.utah.gov>.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental

services:

(a) Composite resin fillings on posterior teeth;

(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;

(c) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(d) Fixed bridges or pontics;

(e) All types of dental implants;

(f) Tooth transplantation;

(g) Ridge augmentation;

(h) Osteotomies;

(i) Vestibuloplasty;

(j) Alveoloplasty;

(k) Occlusal appliances, habit control appliances or interceptive orthodontic treatment;

(l) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(m) Procedures such as arthroscopy, meniscectomy, or condylectomy;

(n) Nitrous oxide analgesia;

(o) House calls;

(p) Consultation or second opinions not requested by Medicaid;

(q) Services provided without prior authorization;

(r) General anesthesia for removal of an erupted tooth;

(s) Oral sedation for behavior management;

(t) Temporary dentures or temporary stayplate partial dentures;

(u) Limited orthodontic treatment, including removable appliance therapies;

(v) Removable appliances in conjunction with fixed banded treatment; and

(w) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings;

(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; and

(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab prepared facings).

**R414-49-7. Emergency Dental.**

This section defines the scope of dental services available to members who are otherwise eligible under the Medicaid program.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Emergency dental services are the treatment of a sudden and acute onset of a dental condition that requires immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental or medical health.

(b) Emergency dental service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

**KEY: Medicaid**

April 22, 2019  
Notice of Continuation June 17, 2014

26-1-5  
26-18-3



**R428. Health, Center for Health Data, Health Care Statistics.****R428-1. Health Data Plan and Incorporated Documents.****R428-1-1. Legal Authority.**

This rule is promulgated in accordance with Title 26, Chapter 33a.

**R428-1-2. Purpose.**

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

**R428-1-3. Health Data Plan Adoption.**

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

**R428-1-4. Incorporation by Reference.**

The following documents are adopted and incorporated by reference:

(1) "Utah Healthcare Facility Data Submission Guide" means:

(a) Utah Healthcare Facility Data Submission Guide, Version 2 for data submissions required on or after February 16, 2018;

(b) Utah Healthcare Facility Data Submission Guide, Version 2.1 for data submissions required on or after May 16, 2019;

(2) "NCQA Survey Specifications" means:

(a) HEDIS 2017, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required on or after January 1, 2018;

(3) "NCQA HEDIS Specifications" means:

(a) HEDIS 2017, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required on or after January 1, 2018;

(4) "Data Submission Guide for Claims Data" means:

(a) Utah All-Payer Claims Database Data Submission Guide Version 3.0 for data submissions required before March 1, 2018, and

(b) Utah All-Payer Claims Database Data Submission Guide Version 3.1 (as corrected on March 15, 2018) for data submissions required on or after March 1, 2018.

**KEY: APCD, health, health policy, health planning**

**May 1, 2019**

**26-33a-104**

**Notice of Continuation November 10, 2016**

**R430. Health, Family Health and Preparedness, Child Care Licensing.****R430-8. Exemptions From Child Care Licensing.****R430-8-1. Legal Authority and Purpose.**

(1) This rule is enacted and enforced in accordance with Utah Code, Title 26, Chapter 39.

(2) This rule defines what constitutes child care that is excluded from all or some of the regulatory requirements of the Utah Department of Health, Child Care Licensing Program.

**R430-8-2. Definitions.**

(1) "Background Finding" means information that may result in an individual failing to pass a background check from Child Care Licensing.

(2) "Background Check Denial" means that an individual has failed to pass the background check and is prohibited from being involved with a child care program.

(3) "Calendar Week" means from Sunday through Saturday.

(4) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(5) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(6) "Child Care Program" means a person or business that offers child care.

(7) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

(g) an individual age 12 years or older who resides in the facility; and

(h) anyone who has unsupervised contact with a child in care.

(8) "Department" means the Utah Department of Health.

(9) "Facility" means a child care program or the premises used for child care.

(10) "Involved with Child Care" means to do any of the following at or for a child care program:

(a) provide child care;

(b) volunteer at a child care program;

(c) own, operate, direct, or be employed at a child care program;

(d) reside at a facility where child care is provided; or

(e) be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.

(11) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(12) "Parochial Education Institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution and exercises oversight over the health and safety of the children in

the program;

(c) is owned and operated by a religious institution that is registered with the federal government as 501(c)(3) religious organization;

(d) is not directly funded at public expense;

(e) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(f) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(13) "Private Education Institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution, and exercises oversight over the health and safety of the children in the program;

(c) is not directly funded at public expense;

(d) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(e) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(14) "Public School" means a school, including a charter school, that is directly funded at public expense and is regulated by a board of education governed by Title 53A, Chapter 3, Local School Boards.

(15) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(16) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(17) "Relative Care" means care provided to a qualifying child by or in the home of the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, uncle, step-aunt, step-uncle, great-aunt, or great-uncle.

(18) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

**R430-8-3. License or Certificate and Background Check Not Required.**

(1) The following types of care do not require a child care license or certificate from, or the submission of background check documents to, the Department:

(a) Care provided on no more than two days during any calendar week;

(b) Care provided in the home of the provider for less than four hours per day, or for fewer than five children in the home at one time;

(c) Care provided in the home of the provider on a sporadic basis only;

(d) Care provided by a facility or program owned or operated by an agency of the United States government;

(e) a group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;

(f) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(g) care provided at a residential support program that is licensed by the Department of Human Services.

**R430-8-4. Background Check and Public Notice Required.**

(1) The following types of care do not require a child care license or certificate from the Department, but do require the provider to meet the background check and public notice requirements outlined in this rule:

(a) Care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;

(b) Care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;

(c) Care provided to a qualifying child at a public school by an organization other than the public school, if:

(i) the care is provided under contract with the public school or on school property; or

(ii) the public school accepts responsibility and oversight for the care provided by the organization;

(d) Care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;

(e) Care provided by an organization that:

(i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;

(ii) provides care pursuant to a written agreement with:

(A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or

(B) a county that provides oversight for the program; and

(iii) provides care to a child who is over the age of four and under the age of 13;

(f) Care provided to a qualifying child at a facility where:

(i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed,

(ii) the duration of the care is less than four hours for an individual qualifying child in any one day,

(iii) the care is provided on a sporadic basis,

(iv) the care does not include diapering a qualifying child, and

(v) the care does not include preparing or serving meals to a qualifying child.

(2) Providers listed in this subsection shall submit annually to the Department an application for verification of license exempt status, on the form provided by the Department.

(3) Providers listed in this subsection shall post, in a conspicuous location near the entrance of the provider's facility, a notice prepared by the Department that:

(a) states that the facility is exempt from licensure and certification; and

(b) provides the department's contact information for submitting a complaint.

(4) Substantiated complaint allegations against providers listed in this subsection will be posted by the Department on the Child Care Licensing website.

**R430-8-5. Background Check Requirements and Appeals.**

(1) The requirements of this subsection apply to all facilities listed in subsection R430-8-4(1) above.

(2) The provider shall submit to the Department background checks and fees for all covered individuals as defined in R430-8-2(7).

(3) Before a new covered individual becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form,

(b) authorize the individual's background check form,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(4) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints for a Next Generation, national criminal history check and fingerprints fees.

(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(7) Fingerprints are not required if the covered individual has:

(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;

(b) resided in Utah continuously since the fingerprints were submitted; and

(c) kept their CCL background check current.

(8) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card issued by the Department.

(9) At least 2 weeks before the end of the month that is written on a covered individual's background check card, the provider shall:

(a) have the individual submit an online CCL background check form,

(b) authorize the individual's background check form, and

(c) pay all required fees.

(10) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions,

(d) any Misdemeanor A convictions, or

(e) Misdemeanor B and C convictions for the reasons listed in R430-8-6(10).

(11) The following convictions, regardless of severity, may result in a background check denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

(12) A covered individual with a Class A misdemeanor background finding not listed in R430-8-6(11) may be involved with child care when:

(a) 10 or more years have passed since the Class A misdemeanor offense, and

(b) there is no other conviction for the individual in the past 10 years.

(13) A covered individual with a Class A misdemeanor background finding not listed in R430-8-6(11) may be involved with child care for up to 6 months if:

(a) 5 to 9 years have passed since the offense,

(b) there is no other conviction since the Class A misdemeanor offense,

(c) the individual provides to the Department documentation of an active petition for expungement, and

(d) the provider ensures that the individual does not have unsupervised contact with any child in care.

(14) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.

(15) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to nonviolent drug offenses that occurred 10 or more years before the CCL background check was conducted.

(16) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

(17) If the provider has a background check denial, the Department may suspend or deny their exemption approval until the reason for the denial is resolved.

(18) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

(19) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(20) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

(21) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

(22) An applicant or exempt provider may appeal any Department decision within 15 working days of being informed in writing of the decision.

#### **R430-8-6. Voluntary Licensure.**

(1) A child care provider who is not required to be licensed or certified under this rule may voluntarily receive a license and agree to be subject to all of the terms and conditions of the license, except for the following:

(a) relative care only as defined in R430-8-2(17); and

(b) care provided in the home of the provider on a sporadic

basis only.

**KEY: child care facilities**

**August 10, 2018**

**Notice of Continuation April 17, 2019**

**26-39**

**R432. Health, Family Health and Preparedness, Licensing.  
R432-45. Nurse Aide Training and Competency Evaluation  
Program.**

**R432-45-1. Introduction and Authority.**

The Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211.(b)(5)(A)(B)(C)(D)(E)(F)(G), (e)(1)(2), f(2)(A)(B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nurse aide (CNA) to provide quality nursing services to nursing facility residents.

**R432-45-2. Definitions.**

(1) "Certified nurse aide" means any person who completes a nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.

(2) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nurse aide and a demonstration of the tasks the nurse aide is expected to perform as part of the aide's function.

(3) "Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(4) "Nurse Aide Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nurse aide.

(5) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(6) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(8) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(9) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(11) "Train-the-Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train a CNA candidate who is at least 16 years old through demonstrations and lectures.

(12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(13) "Utah Nursing Assistant Registry" means the state agency that approves nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing,

Medicare or Medicaid facility, certifies nurse aides who have completed a NATCEP, and renews certifications of qualified CNAs.

**R432-45-3. Program Access Requirements.**

(1) A nurse aide is required to complete a NATCEP and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nurse aide on or before July 1, 1989, meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years and to a current nursing student. An official transcript of a nursing fundamentals class must accompany the Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, the candidate must complete a NATCEP;

(b) an expired licensed nurse who can show proof of previous licensure in any state and who was in good standing with that state's professional board. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a NATCEP.

(c) an expired Utah CNA who is in good standing with UNAR. UNAR shall grant the candidate one attempt to pass both the skills and written portion of the examination within one year of the certification expiration date. If the candidate does not pass either portion, the candidate must retrain;

(d) any out-of-state CNA who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in that other state.

(4) An out-of-state expired CNA must complete a NATCEP in the state of Utah.

**R432-45-4. Competency Evaluation.**

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved NATCEP;

(d) UNAR shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. UNAR

must develop this examination from a pool of test questions, only a portion of which to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(g) The competency evaluation must include a demonstration of the tasks the nurse aide is expected to perform as part of the nurse aide's function as a CNA;

(h) For the skills training component of the evaluation, UNAR shall establish a performance record for each NATCEP of major duties and skills that include:

(i) a list of the duties and skills that UNAR expects a CNA to learn in the program in accordance with this section;

(ii) a record that documents when the nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the NATCEP, the NATCEP shall give the nurse aide a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

#### **R432-45-5. Nurse Aide Training Requirements Under UNAR.**

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a NATCEP and all new instructors must be fingerprinted and have their records checked in state and national bureaus. Before receiving NATCEP approval, a NATCEP must send a background check and fingerprinting to UNAR to be placed in the file of the proposed new training program.

(4) In accordance with this section, UNAR shall review and render a determination of approval or disapproval of any NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is at least 16 years old on or before the first day the student begins class; and

(b) shall include an orientation to the training program.

(7) The nurse aide training program must meet certain content requirements to be UNAR-approved.

(a) NATCEP must consist of at least 100 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting resident independence;

(v) respecting resident rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 24 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies before training in any facility. The skills training must ensure that each nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

(A) bathing that includes mouth care;

(B) grooming;

(C) dressing;

(D) using the toilet;

(E) assisting with eating and hydration;

(F) proper feeding techniques; and

(G) skin care.

(iii) Basic restorative services:

(A) use of assistive devices in ambulation, eating, and dressing;

(B) maintenance of range of motion;

(C) proper turning and positioning in bed and chair;

(D) bowel and bladder training;

(E) care and use of prosthetic and orthotic devices; and

(F) transfer techniques.

(iv) Mental Health and Social Service Skills:

(A) modifying one's behavior in response to the resident's behavior;

(B) identifying developmental tasks associated with the aging process;

(C) training the resident in self-care according to the resident's ability;

(D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;

(E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(F) using the resident's family as a source of emotional support.

(v) Resident's rights:

(a) providing privacy and maintaining confidentiality;

(b) promoting the resident's right to make personal choices to accommodate the resident's needs;

(c) giving assistance in solving grievances;

(d) providing needed assistance in getting to and participating in resident and family groups and other activities;

(e) maintaining care and security of resident's personal possessions;

(f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and

(g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.

(8) Qualification of Instructors:

(a) a NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;

(b) who is in good standing with DOPL;

(c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and

(d) must have at least three hours of documented consulting time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements;

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach a CNA candidate who is at least 16 years old. All high school instructors must be certified to teach in the classroom by completing a "Train the Trainer" program or be certified to teach as defined by the Utah State Office of Education before providing instruction in the classroom.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A NATCEP must provide a classroom with the following:

(a) adequate space and furniture for the number of students;

(b) adequate lighting and ventilation;

(c) comfortable temperature;

(d) appropriate audio-visual equipment;

(e) skills lab equipment to simulate a resident's unit;

(f) clean and safe environment; and

(g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:

(a) After the initial approval of a NATCEP, UNAR grants a one-year probationary period;

(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation,

UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the nurse aide training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified nurse aides with at least 12 hours of staff development training each year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.

(19) In addition to the nurse aide training that UNAR requires, each program shall provide a two-hour orientation of the clinical site for that student before beginning the clinical rotation. The orientation hours are not included in the required 24 hours of clinical training. This orientation phase must include an explanation of:

(a) facility organizational structure;

(b) facility policies and procedures;

(c) facility philosophy of care;

(d) resident population; and

(e) employee rules.

#### **R432-45-6. Certified Nurse Aide Misconduct.**

CNA misconduct that adversely affects the health, safety or welfare of the public may result in loss of nurse aide certification.

(1) CNA misconduct related to client safety and integrity includes:

(a) leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;

(b) failing to report information regarding incompetent, unethical or illegal practice of any health care provider to proper authorities;

(c) failing to respect client rights and dignity regardless of social or economic status, personal attributes, or nature of health problems or disability; or

(d) failing to report actual or suspected incidents of client abuse.

(2) Engaging in sexual misconduct related to the client or to the workplace includes:

(a) engaging in sexual relations if the patient is receiving care from an institution or entity that employs the CNA;

(b) engaging in sexual relations with a client for a period when a generally recognized caregiver and patient relationship exists; or

(c) engaging in sexual relations for an extended period when a patient has reasonable cause to believe a professional relationship exists between the patient or anyone certified under the provisions of this rule (Rule R432-45).

(3) CNA misconduct related to administrative rules and state and federal law includes:

(a) knowingly aiding, abetting or assisting an individual to violate or circumvent any rule or regulation intended to guide the conduct of health care providers;

(b) violating the privacy rights and confidentiality of a client, unless disclosure of client information is required by law;

(c) discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin, or disability;

(d) abusing a client by intentionally causing physical harm or discomfort, or by striking a client, intimidating a client, threatening a client, or harassing a client;

(e) neglecting a client by allowing a client to be injured or

remain in physical pain and discomfort;

(f) engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client by using derogatory names or gestures or profane language;

(g) using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;

(h) possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including oneself, except as directed by a health care professional authorized by law to prescribe drugs; or

(i) removing or attempting to remove drugs, supplies, property, or money from the workplace without authorization.

(4) CNA misconduct related to communication includes:

(a) inaccurate recordkeeping in client or agency records;

(b) incomplete recordkeeping regarding client care that includes failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;

(c) falsifying a client or agency record that includes filling in someone else's omissions, signing someone else's name, recording care not given, or fabricating data and values;

(d) altering a client or agency record that includes changing words, letters and numbers from the original document to mislead the reader of the record, and adding to the record after the original time and date without indicating a late entry;

(e) destroying a client or agency record;

(f) failing to maintain client records in a timely manner which accurately reflect management of client care, including failure to make a late entry within a reasonable time period; or

(g) failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.

(5) CNA misconduct related to the client's family includes:

(a) failing to respect the rights of the client's family regardless of social or economic status, race, religion, or national origin;

(b) using the CNA-client relationship to exploit the family for the CNA's personal gain or for any other reason;

(c) stealing money, property, services, or supplies from the family; or

(d) soliciting or borrowing money, materials or property from the family.

(6) CNA misconduct related to co-workers that includes violent, abusive, threatening, harassing, or intimidating behavior towards a co-worker, which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

(7) CNA misconduct related to achieving and maintaining clinical competency includes:

(a) failing to competently perform the duties of a nursing assistant;

(b) performing acts beyond the authorized duties for which the individual is certified; or

(c) assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency has not been established or maintained.

(8) CNA misconduct related to impaired function includes:

(a) using drugs, alcohol or mind-altering substances to an extent or in a manner dangerous or injurious to the nursing assistant or others, or to an extent that such use impairs the ability to safely conduct the duties of a nursing assistant; or

(b) having a physical or mental condition that makes the nursing assistant unable to safely perform the duties of a nursing assistant.

(9) CNA misconduct related to certificate violations includes:

(a) providing, selling, applying for, or attempting to procure a certificate by willful fraud or misrepresentation;

(b) functioning as a medication assistant without current

certification as a medication assistant;

(c) altering a certificate of completion of training or nursing assistant certification;

(d) disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;

(e) allowing another person to use one's nursing assistant certificate for any purpose;

(f) using another's nursing assistant certificate for any purpose; or

(g) representing oneself as a CNA without current, valid CNA certification.

#### **R432-45-7. Nurse Aide Registry.**

(1) UNAR is the central registry for all certified nurse aides. This registry must identify all individuals who have successfully completed a NATCEP with a passing score of 75.

(2) A NATCEP must report to UNAR, within five days after the program ends, the names of all individuals who satisfactorily completed the program.

(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(4) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(5) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(6) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

#### **R432-45-8. Limitations.**

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a NATCEP at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nurse aide for more than 120 days only if the aide has completed a NATCEP.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

#### **KEY: health care facilities**

**August 25, 2014**

**Notice of Continuation April 5, 2019**

**26-21-5**

**26-21-1**



**R448. Health, Disease Control and Prevention, Medical Examiner.****R448-10. Unattended Death and Reporting Requirements.****R448-10-1. Authority and Purpose.**

This rule is authorized by Utah Code Section 26-1-5. It clarifies the meaning of unattended death under the provisions of Utah Code Subsection 26-4-2(8) and the requirements of Utah Code Section 26-4-8.

**R448-10-2. Death Under Physician's Care and Supervision.**

For purposes of Utah Code Subsection 26-4-2(8), an individual whose care is directly supervised by a physician and who has been seen by a licensed nurse whose activity is directly supervised by the physician is deemed to have been seen by the physician within the scope of the physician's professional capacity.

**R448-10-3. Reporting Requirement.**

(1) If a death occurs and the individual's care within 30 days prior to death was not directly supervised by a physician or if the individual was not seen by a licensed nurse whose activity is directly supervised by the individual's treating physician, then the death must be reported as required under Utah Code Section 26-4-8.

(2) All other deaths that meet the criteria in Utah Code Section 26-4-7, must be reported as required by Utah Code Section 26-4-8.

(3) As required by R432-750-29, a hospice is required to report all deaths supervised by the hospice if the death was a result from injury, accident, or other possible unnatural cause.

**KEY: medical examiner, unattended death, reporting death****June 19, 2000****26-1-5****Notice of Continuation April 5, 2019****26-4-2****26-4-7****26-4-8**

**R448. Health, Disease Control and Prevention, Medical Examiner.****R448-20. Access to Medical Examiner Reports.****R448-20-1. Authority and Purpose.**

This rule is authorized by Utah Code Section 26-1-5. It establishes who may, under the provisions of Utah Code Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

**R448-20-2. Access by Next-of-Kin.**

(1) Next-of-kin who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

- (a) surviving spouse;
- (b) any natural or adoptive parent, regardless of whether the deceased was an adult;
- (c) any full or half sibling; and
- (d) any child aged 18 or older.

(2) All next-of-kin have equal access to medical examiner records under 26-4-17, without preference or priority.

**R448-20-3. Access by a Legal Representative.**

(1) Legal representatives who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

- (a) any legal guardian of the person, regardless of whether the deceased was child or an adult; and
- (b) a personal representative of the estate of the deceased appointed by a court of competent jurisdiction.

(2) All legal representatives have equal access to medical examiner records under Utah Code Subsection 26-4-17(3), without preference or priority.

**R448-20-4. Request and Verification of Right to Record.**

A request made under Utah Code Subsection 26-4-17(3) must be in a writing either;

(1) bearing a notary seal attesting to the identity of the individual and establishing the individual's right to the record; or

(2) signed in the presence of medical examiner staff after producing documentation establishing the individual's right to the record.

**KEY: medical examiner, records****June 19, 2000****Notice of Continuation April 5, 2019****26-1-5****26-4-17**

**R512. Human Services, Child and Family Services.****R512-43. Adoption Assistance.****R512-43-1. Purpose and Authority.**

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) disability benefits by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

**R512-43-2. Definitions.**

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means (a) the date an Intent to Adopt a Specific Child is signed with Child and Family Services, or (b) the adoption finalization court date.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care, even if Child and Family Services no longer has an open case at the time adoption proceedings are initiated, as long as the child continues to reside with and is being adopted by the relative granted custody by the court as a result of the protective custody episode.

(4) A child or youth who was taken into protective custody and placed with a relative and the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(a) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(5) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(6) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(7) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

**R512-43-3. General Requirements for Adoption Assistance.**

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the

following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-12-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

**R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.**

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2)

may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

#### **R512-43-5. Monthly Subsidy.**

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI disability benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services worker may initiate a request for a change in the amount of subsidy up to two times per fiscal year, when needs or resources change.

(i) If the adoptive family is receiving post adoption services and has an open Child and Family Services case, a change in the amount of subsidy may be initiated at any time during the open case to address service needs.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services worker. Prior to subsidy negotiation, the adoptive parents must have reviewed the child's case file information and discussed in depth with the Child and Family Services worker what will be needed after the child leaves state's custody.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-12.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the Child and Family Services worker and adoptive family identify the child's level of need.

(b) The Child and Family Services worker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The Child and Family Services worker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical disability condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a mental health diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical

disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe cognitive disability, autism, or fetal alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as a need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

(c) A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date.

(d) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.

(e) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(g) Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(h) Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(i) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption

assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI for a disability by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) A child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iii) A child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iv) A child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(v) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(vi) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(vii) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(viii) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

#### **R512-43-6. State Medical Assistance.**

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

**R512-43-7. Supplemental Adoption Assistance.**

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

**R512-43-8. Regional Adoption Assistance Committee.**

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

- (a) Chairperson;
- (b) Clinical consultant or casework supervisor;
- (c) Regional budget officer or fiscal representative;
- (d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;
- (e) Regional administrator or other staff with relevant responsibilities;
- (f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

- (a) Verification that a child qualifies for adoption assistance,
- (b) Approval for reimbursement of allowable, reasonable non-recurring costs,
- (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals,
- (d) Approval of supplemental adoption assistance up to \$3,000,
- (e) Extension of adoption assistance up to age 21 for a qualifying child,
- (f) Renewal of adoption assistance, and
- (g) Documentation of committee decisions.

**R512-43-9. Adoption Assistance Review.**

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

**R512-43-10. Adoption Monthly Subsidy Suspension.**

(1) Monthly subsidy payments may be temporarily suspended in situations in which a payment is sent to a parent's home address and cannot be delivered or a direct deposit payment notice is returned to the office of Child and Family Services as unable to deliver. The monthly subsidy may be suspended until the parent contacts Child and Family Services to establish an address for the parent.

(a) After one year of suspended monthly subsidies, the monthly subsidy payment will be terminated.

(b) If the parent contacts Child and Family Services after termination of the monthly subsidy, Child and Family Services will repay up to one year of monthly subsidy payments at the amount determined in the Adoption Assistance Agreement.

**R512-43-11. Termination of Adoption Assistance.**

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

- (a) The terms of the adoption assistance agreement are concluded.
- (b) The adoptive parents request termination.
- (c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.
- (d) The child dies.
- (e) The adoptive parents die.
- (f) The adoptive parents' legal responsibility for the child ceases.
- (g) The state determines that the child is no longer receiving financial support from the adoptive parents.
- (h) The child enters the military.
- (i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-5 shall be provided at least 30 days before funding is discontinued due to

lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

responsible for paying for the specific service.

**KEY: adoption, child welfare, foster care**

**April 8, 2019**

**62A-4a-102**

**Notice of Continuation January 25, 2016**

**62A-4a-106**

**62A-4a-901 through 62-4a-907**

**R512-43-12. Fair Hearings.**

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

- (a) The adoption assistance application is denied;
- (b) The adoption assistance application is not acted upon with reasonable promptness;
- (c) Adoption assistance or supplemental adoption assistance is reduced, suspended, terminated, or changed without the concurrence of the adoptive parents;
- (d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;
- (e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-5 applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

- (i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.
- (ii) A denial of assistance was based upon a means test of the adoptive family.
- (iii) An erroneous state determination was utilized to find a child ineligible for assistance.
- (iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-5 applies. The state may provide corroborating facts to the family or the fair hearing officer.

**R512-43-13. Interstate Adoption Assistance.**

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially

**R523. Human Services, Substance Abuse and Mental Health.****R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities.****R523-2-1. Authority.**

This rule is promulgated under authority granted to the Division of Substance Abuse and Mental Health (Division) by Subsections 62A-15-105, 62A-15-108(1), 62A-15-611(2)(a), 62A-15-612(2) and 62A-15-902(2)(c).

**R523-2-2. Purpose.**

- (1) The purpose of this rule is to provide:
  - (a) Guidance on the priorities for treatment services
  - (b) Guidance on the rights of individuals participating in services.
  - (c) A process for Local Mental Health Authorities (LMHAs) and Local Substance Abuse Authorities (LSAAs) to set policies on fees for service.
  - (d) Guidance on LMHA/LSAA program standards.
  - (e) Guidance on the formula for allocation of funding.
  - (f) Guidance on allocation of Utah State Hospital (Hospital) beds to LMHAs.
  - (g) Guidance on admission to the Hospital and coordination of care.
  - (h) Guidance on determining the proper LMHA under special situations.
  - (i) Guidance on transfer planning between LMHAs from the Hospital.
  - (j) Guidance on conflict resolution.
  - (k) Guidance on prohibited items and devices on the grounds of public mental health facilities.

**R523-2-3. Priorities for Treatment Services.**

(1) Programs providing substance use disorder and mental health treatment services with public funds (federal, state, and local match) shall comply with the priorities listed below. The Division shall regularly seek and receive input from the Utah Behavioral Health Planning and Advisory Council on priorities for services.

(2) Mental Health services provided with public funds (federal, state, and local match) shall provide services based on immediacy of need and severity of the mental illness. Priority may also be given to under-served age groups as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention, suicide prevention, assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

- (i) Children, youth, and adults with severe mental illness;
  - (ii) Children, youth, and adults with acute mental illness;
- and

(iii) Children, youth and adults who are receiving services from other divisions within the Department of Human Services.

(c) Provisions of services to children with emotional disabilities, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

(3) Substance use disorder treatment services provided with public funds (federal, state, and local match) shall provide priority admission to the following populations (in order of priority):

- (a) Pregnant females who use drugs by injection;

- (b) Pregnant females who use substances;
- (c) Other persons who use drugs by injection;
- (d) Substance using females with dependent children and their families, including women who are attempting to regain custody of their children; and
- (e) All other clients with a substance use disorder, regardless of gender or route of use.

**R523-2-4. Rights of Individuals Participating in Services.**

(1) All service providers contracted with the Division and County Local Authority programs shall disclose the following information in writing to all individuals participating in treatment services:

- (a) Rights and responsibilities to participate in the development of the treatment or other type of service plan.
- (b) Right to be involved in selection of their primary therapist.
- (c) Right to access their individual treatment records.
- (d) Right to informed consent regarding medications.
- (e) Rights regarding medication-assisted treatment.
- (f) Disclosure of all program fees and personal financial responsibility.

(g) Information on grievance procedures that includes all necessary information to file a formal grievance.

(h) Service provider's commitment to treat individuals with substance use disorders and mental health consumers with dignity and individuality in a positive, supportive and empowering manner.

(2) This information shall be shared with the individual participating in treatment services at the time of intake and a signed copy made part of their individual file. The Division shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

(3) If an individual is impaired or temporarily incapable of understanding the initial information, it shall be shared again when the individual is able to understand the information and give informed consent. This shall also be made part of their individual file.

**R523-2-5. LMHA/LSAA Fee Policy.**

(1) Each LMHA/LSAA shall require all programs that receive federal and state funds from the Division and provide services to clients to establish a policy to set and collect fees.

(a) Each fee policy shall include:

- (i) A fee reduction plan based on the client's ability to pay for services; and
- (ii) A provision that clients who have received an assessment and require mental health or substance use disorder services shall not be denied services based on the lack of ability to pay.

(b) Any adjustments to the assessed fee shall follow the procedures approved by the LMHA/LSAA.

(2) The governing body of each LMHA/LSAA shall approve the fee policy and shall set a usual and customary rate for services rendered.

(3) All LMHA/LSAA programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(4) All clients shall be assessed fees based on:

- (a) The usual and customary rate established by the LMHA/LSAA, or
- (b) A negotiated contracted cost of services rendered to clients.

(5) Fees assessed to clients shall not exceed the average cost of delivering the service.

(6) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the LMHA/LSAA.



(7) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(8) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(9) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.

#### **R523-2-6. LMHA/LSAA Program Standards.**

(1) The Division establishes minimum standards for LMHA/LSAA programs.

(a) Each LMHA/LSAA program shall have the appropriate current license issued by the Office of Licensing, Department of Human Services and any other required licenses.

(b) Each LMHA/LSAA shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the Division Directives for the Division of Substance Abuse and Mental Health;

(ii) Designate the projected use of state and federal contracted dollars and the 20% county match dollars; and

(iii) Define the LMHA/LSAA's priorities for service and the population to be served.

(c) Each LMHA shall provide or arrange for the provision of services within the following continuum of care:

(i) Inpatient care and services (hospitalization);

(ii) Residential care and services;

(iii) Day treatment and psycho-social rehabilitation;

(iv) Outpatient care and services;

(v) Twenty-four hour crisis care and services;

(vi) Psychotropic medication management;

(vii) Case management services;

(viii) Community supports including in-home services, housing, family support services and respite services;

(ix) Consultation, education and preventative services, including case consultation, collaboration with other county service agencies, public education and public information; and

(x) Services to persons incarcerated in a county jail or other county correctional facility.

(d) Each LSAA shall provide or arrange for the provision of services within the following continuum of care:

(i) Universal prevention;

(ii) Selective prevention;

(iii) Indicated prevention including the educational series approved by the Division in R523-11 for individuals convicted of driving under the influence; and

(iv) Treatment services prescribed by Division contract and Directives; and

(v) Recovery Support Services.

(e) Each LMHA/LSAA shall participate in a yearly on-site evaluation conducted by the Division.

(f) The LMHA/LSAA shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided; and

(ii) Progress is made toward accomplishing contract goals and objectives.

(g) The LMHA/LSAA shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

#### **R523-2-7. Formula for Allocation of Funding.**

(1) The Division establishes by rule, a formula for the annual allocation of funds to LSAs and a formula for the annual allocation of funds to the LMHAs.

(a) The formulas do not apply to funds used by the Division for administration, statewide services consistent with

the requirements of Section 62A-15-201 et seq. for discretionary grants awarded to the Division, funds appropriated for drug court, the Drug Offender Reform Act and the Medicaid Match funds.

(b) Funds used by the Division for administration shall not exceed 5% of the total annual legislative appropriation to the Division excluding the appropriation for the Utah State Hospital.

(c) The funding formulas shall be applied annually to state and federal block grant funds appropriated by the legislature to the Division and are intended for the annual equitable distribution of these funds to the state's LMHAs and LSAs.

(d) Excluding discretionary grants, DORA, Drug Court, and other programs for which Utah Code establishes the funding process, funds used by the Division for statewide substance use disorder services consistent with requirements of Section 62A-15-201 et seq. shall not exceed 15% of the total annual substance abuse legislative appropriation to the Division.

(e) Population data used in the formulas shall be updated annually using the most current data available from the Utah Department of Health's website, Public Health Indicator Based Information System (IBIS).

(f) New funding and/or decreases in funding shall be processed and distributed through the funding formulas.

(g) Each LMHA/LSAA shall provide funding equal to at least 20% of the state general fund appropriation that it receives to fund services described in that LMHA/LSAA's annual plan.

(i) The Division determines that the funds required by Subsection 17-43-301(4)(a)(x) (normally called the 20% match requirement) shall be paid from tax revenues assessed by the county legislative body and collected by the County Clerk.

(ii) If a LMHA/LSAA is unable to provide the required matching funds, the LMHA/LSAA shall be allocated the amount the LMHA/LSAA can match.

(iii) Excess funds may be allocated on a one-time basis to LMHAs/LSAs with the ability to provide matching funds.

(iv) If no LMHA/LSAA can provide the required match, the Division may use the funds to purchase statewide services.

(h) Changes in funding related to the adoption of new formulas in 2014 shall be phased in over a five year period beginning in State Fiscal year 2015.

(2) Funding for mental health shall be allocated as follows:

(a) The Division shall allocate 5% of mental health funds to the 24 smallest counties ranked by population as a rural differential. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(b) The Division shall allocate all remaining mental health funds to the LMHAs on a per capita basis, according to the most current population data available from IBIS.

(c) The funding formula may utilize a determination of need other than population if the Division establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(3) The funding formula for substance use disorder services shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's LSAs.

(a) The Division shall allocate a total of \$2,390,643 in funds used for prior cost of living increases and funds previously contracted with statewide residential providers to the

LMHAs/LSAAs in an amount equal to the 2014 allocation.

(b) The Division shall allocate 5% of the remaining funds to the 24 smallest counties ranked by population. The rural differential shall be allocated using the following methodology:

(i) 35% divided in equal amounts to the six smallest counties.

(ii) 30% divided in equal amounts to the seventh through twelfth smallest counties.

(iii) 20% divided in equal amounts to the thirteenth through the eighteenth smallest counties.

(iv) 15% divided in equal amounts to the nineteenth through the twenty-fourth smallest counties.

(c) Sixty percent of the remaining funds shall be allocated to each county based on the incidence and prevalence of substance use disorders based on the following:

(i) The percent of adults estimated to be binge drinkers as reported by the Behavioral Risk Factor Surveillance System (BRFSS).

(ii) The percent of adults estimated to be chronic drinkers as reported by BRFSS.

(iii) The percent of youth reporting alcohol use within the past 30 days by the most current Student Health and Risk Protection Survey (SHARP).

(iv) The percent of youth estimated to be binge drinkers by the most current SHARP.

(v) The percent of youth needing drug treatment as reported by the most current SHARP.

(d) Forty percent of the remaining funds shall be allocated to LSAAs on a per capita basis, according to the most current population data available from the IBIS.

#### **R523-2-8. Formula for Allocation of Medicaid Match Funds.**

(1) Medicaid match funds appropriated to the Division shall be allocated to the LMHAs/LSAAs using the methodology described below:

(a) The Division shall obtain the following data from the Utah Department of Health:

(i) The number of eligible Medicaid recipients in each county, for each month of the previous state fiscal year hereinafter called Medicaid Member Months; and;

(ii) The actuarially established rates for each county.

(b) The Division shall calculate County Need for Medicaid match funds by multiplying each County's Total Medicaid Member Months by their corresponding actuarial rates for the most current 12 month period.

(c) The Division shall sum all County Need to determine the State Medicaid Match Need.

(d) The percent of total Medicaid match funds for each local authority shall be determined by dividing the sum of County Need by the State Medicaid Match Need.

(e) Local authorities that do not participate in the Medicaid prospective payment-capitation plan shall receive the amount of funds they would have received if the funds had been distributed using state population.

(f) Each LMHA and LSAA shall provide funding from tax revenues assessed by the County legislative body equal to at least 20% of the Medicaid match funds.

(i) If a LMHA/LSAA is unable to provide the required matching funds, the LMHA/LSAA shall be allocated the amount the LMHA/LSAA can match.

(ii) Excess funds may be allocated on a one-time basis to local authorities with the ability to provide matching funds.

#### **R523-2-9. Distribution of Fee-On-Fine (DUI) Funds.**

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the LSAAs based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-2-

7. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the LSAA's governing board to send the funds to the local service provider.

(2) Utah Code 62A-15-503 states these funds "shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives."

(3) Each county proposed use of the funds shall be identified in the Local authority area plan submitted to the Division each year as described in Utah Code 62A-15-103(2)(c)(xi).

(4) Each county's actual expenditures shall be documented in an expenditure report submitted by the local authority within 60 days of the end of the State fiscal year that describes the actual use of the funds from this account.

(5) The Division shall review and monitor funds from this project during the annual site visit.

#### **R523-2-10. Allocation of Utah State Hospital Adult Bed Days to Local Mental Health Authorities.**

(1) The Division herein establishes a formula to allocate to LMHAs the adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a).

(2) The formula established provides for allocation based on:

(a) The percentage of the state's adult population located within a LMHA catchment area; and

(b) A differential to compensate for the additional demand for hospital beds in LMHA catchment areas that are located within urban areas.

(3) The Division hereby establishes a formula to determine adult bed allocation:

(a) The most recent available population estimates are obtained from IBIS.

(b) The total adult population figures for the State are identified. Adult means age 18 and over.

(c) Adult population numbers are identified for each county.

(d) The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to Subsections 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

(i) The total number of adult beds available at the Utah State Hospital is determined.

(ii) 4.8% is subtracted from the total number of beds available for adults to be allocated as an urban differential.

(e) The total number of available adult beds minus the urban differential is multiplied by the county's percentage of the state's total adult population to determine the number of allocated beds for each county.

(f) Each catchment area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

(g) The urban differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

(h) At least one adult bed is allocated to each LMHA.

(4) In accordance with Subsection 62A-15-611(6), the Division shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

- (5) Applying the formula:
- (a) Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.
- (b) The Division is responsible to calculate the adult bed allocation.
- (c) Each LMHA will be notified of changes in adult bed allocation.
- (6) The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.
- (7) A LMHA may sell or loan its allocation of adult beds to another LMHA.

**R523-2-11. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.**

- (1) The Division establishes a formula to allocate to LMHAs the pediatric beds at the Utah State Hospital.
- (2) The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a LMHA catchment area.
- (3) Each LMHA shall be allocated at least one pediatric bed.
- (4) The formula to determine pediatric bed allocation:
- (a) The most recent available population estimates are obtained from IBIS.
- (b) The total pediatric population figures for the State are identified. Pediatric means under the age of 18.
- (c) Pediatric population figures are identified for each county.
- (d) The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.
- (e) Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.
- (5) The Division shall periodically review and make changes in the formula as necessary.
- (6) Applying the formula:
- (a) Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.
- (b) Each LMHA shall be notified of changes in pediatric bed allocation.
- (7) The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.
- (8) A LMHA may sell or loan its allocation of pediatric beds to another LMHA.

**R523-2-12. Admission to the Hospital and Coordination of Care.**

- (1) The Division has oversight of the Utah State Hospital as per Subsection 62A-15-103(2)(b)(ii) and shall oversee the Continuity of Care Committees for adult and children/youth patients (when the patient is a child or youth, then patient also refers to the parent and/or legal guardian), as it pertains to Admissions, Coordination of Care, Discharges and Transfers between LMHAs of patients to and from the Utah State Hospital (Hospital). The Division shall conduct monthly Continuity of Care Committee meetings, unless the time for the meetings is postponed or canceled for good cause.
- (2) Each LMHA shall assign a liaison to the Hospital as the identified representative of the LMHA.
- (a) The Liaison shall coordinate patient needs for admission to the Hospital and shall complete the Hospital Pre-admission packet, which includes identifying community discharge and treatment options prior to admission. Any

individual or family member independently requesting voluntary Hospital admission shall be referred to the appropriate LMHA geographical area in which the individual currently resides.

(b) LMHA liaisons are responsible to participate in the coordination of care at the Hospital. This includes participation in clinical staffing, at least monthly. The liaisons and Hospital staff are required to participate in order to coordinate patient treatment, discuss the progress of assigned patients and meet with patients and Hospital staff jointly to formulate patient care.

(c) Patients admitted to the Forensic units are under the jurisdiction of the criminal court system; if the need arises the LMHA liaison will participate in community discharge placements, and follow up care.

(d) Hospital staff and liaison shall coordinate discharge plans. As there are multiple factors inherent in determining "readiness for discharge," this decision will be made on an individual basis, with input from the patient, the Hospital, the LMHA and the Division as necessary. Outplacement funds shall be used to resolve financial barriers that delay or complicate patients discharge. Patient's preferences and feedback regarding discharge placements shall be considered. For adult patients the LMHA liaison is required to arrange discharge placement and follow up care once the patient is ready for discharge as indicated by the Division's REDI program (Readiness, Evaluation and Discharge Implementation). The Hospital and LMHAs are required to use the REDI program. REDI information will be distributed monthly to the Hospital, and the LMHAs to track progress toward discharge. The philosophy of the Hospital is to provide short-term inpatient care for the purpose of stabilization with the goal of transition to a less restrictive level of care as soon as possible. If the Hospital and/or the LMHA determine that the patient is ready for discharge and the coordination of the placement is not occurring, the Hospital and/or liaison is required to notify the Division within five business days.

(e) The Liaison shall follow the Hospital's policies on admission, treatment, discharge, and transfers of all Hospital patients.

**R523-2-13. Determining the Proper LMHA Under Special Situations.**

(1) In the following special situations, the proper LMHA will be determined as follows:

(a) Homeless: Individuals who are homeless and in need of Hospital admission shall be the responsibility of the LMHA in which the individual came to the attention of local emergency services. If from out of state, the individual shall be referred to the LMHA where the individual was identified as mentally ill and in need of services.

(b) Children and Adolescent Patients: Children and Adolescents in state custody shall be referred to the LMHA in which they resided prior to their custody being changed to the Division of Child and Family Services or the Division of Juvenile Justice Services.

(c) Forensic Patients: When a forensic patient, placed at the Hospital pursuant to criminal adjudication as set forth in Utah Code Section 62A-15-902, and is determined to meet criteria for civil commitment, the patient shall be committed to the LMHA where the patient resided prior to his/her arrest.

(d) Prison Transfers: Utah State Prison inmates who are transferred to the Hospital Forensic Unit and subsequently civilly committed become the responsibility of the LMHA where the person resided prior to incarceration.

(e) Developmental Center Transfers: Individuals placed at the Utah State Developmental Center (USDC), who are transferred to the Hospital for treatment of a mental illness are the responsibility of the LMHA of their last community residence (excluding foster and group home placements less than one year in duration). If the individual was admitted to the

USDC as a child, the residence of the custodial parent(s) at the time of admission to USDC shall be used to determine the responsible LMHA. The LMHA is responsible for treatment and discharge planning during the course of the individual's Hospital stay.

**R523-2-14. Transfer Planning Between LMHAs From the Hospital.**

(1) When a Hospital patient or the patient's legal guardian desires to relocate to a new geographical area, the patient's LMHA liaison (the liaison responsible for the civil bed in which the patient currently resides), shall notify the receiving LMHA regarding the desire of the patient. It is the referring liaison's responsibility to discuss the matter with the patient and with the receiving LMHA and work toward discharge.

(2) The referring and receiving LMHA liaison shall discuss the transfer and shall provide information as needed.

(3) Once the receiving LMHA accepts the referral, the receiving LMHA shall proceed with Hospital patient discharge planning. During the time period between the referral to the receiving LMHA and Hospital discharge, the Hospital patient shall continue to be assessed against the bed allocation of the referring LMHA. The receiving LMHA is expected to work toward discharge.

(4) The LMHAs may negotiate an agreement (LMHA to LMHA) if the patient returns to the Hospital, the patient returns to the referring LMHA bed. The agreement is not to exceed one year, whereby the referring LMHA agrees the patient's bed shall be assessed against the bed allocation of the referring LMHA. The agreement specifies the role of each LMHA and who is responsible for providing needed services and payment for those services. Any such agreement shall be made in writing. If a LMHA to LMHA agreement cannot be reached, then the conflict resolution process as outlined in R523-2-15 below shall be followed.

(5) At the conclusion of the negotiated period, the receiving LMHA shall assume all responsibility for the full continuum of mental health services, including Hospital care.

**R523-2-15. Conflict Resolution.**

(1) The Division will work to resolve conflicts between the Hospital and a LMHA, as well as conflicts between LMHAs.

(a) If negotiations between LMHAs and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) The director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) If the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the LMHA and USH clinical director shall meet and attempt to resolve the conflict;

(iii) If a resolution cannot be reached, the LMHA director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) If a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHAs regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

**R523-2-16. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.**

(1) Pursuant to the requirements of Subsection 62A-15-602 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with a LMHA and/or the

Division are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

**KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority**

**April 17, 2019**  
 17-43-301(4)(a)(x)  
 17-50-501  
 17-50-502  
 62A-15-103  
 62A-15-105  
 62A-15-108  
 62A-15-201 et seq.  
 62A-15-602(9)  
 62A-15-610(2)(a)  
 62A-15-611  
 62A-15-612  
 62A-15-902  
 76-8-311.1  
 76-8-311.3  
 76-10-523.5

**R523. Human Services, Substance Abuse and Mental Health.****R523-17. Behavioral Health Crisis Response Systems Standards.****R523-17-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by Section 62A-15-1302.

**R523-17-2. Purpose.**

(1) This rule establishes standards of care and practice for statewide behavioral health crisis response system, crisis line services and a certification for crisis workers.

**R523-17-3. Intent.**

(1) Create standards of care and practice and certification of crisis workers for statewide behavioral health crisis response system, statewide and local mental health crisis lines.

(2) Agencies and individuals impacted by this rule have until June 30, 2019 to come into compliance.

**R523-17-4. Definitions.**

(1) "Bridging Strategies" are transition strategies that include brief patient education that helps the patient understand his or her condition and what treatment options exist to facilitate patient and family follow-through;

(a) Provides assistance with understanding and navigating the system of potential supports, preferably from a peer;

(b) May include counseling by staff from a community-based organization who can then see the patient for follow-up care after discharge and giving the patient a copy of their safety plan and making sure it is relevant to their current level of care; and

(c) Sometimes called peer-or community bridging. Also providing onsite counseling.

(2) "Caring Connection" is defined as a follow up phone call, mailed note, text or e-mail checking back in with the caller. This can be done by crisis staff or other support staff.

(3) "Caring Contacts" Caring contacts are brief communications with patients during care transitions such as discharge from treatment or when patients miss appointments or drop out of treatment. These contacts, through which care providers continue to show support for a patient, can promote patient's feeling of connection to treatment and increase their participation in collaborative treatment. Caring contacts may be especially helpful for patients who have barriers to outpatient care or are unwilling to access outpatient care.

(4) "Certified Crisis Worker" means an individual who:

(a) meets the standards of qualification or certification that the Division of Substance Abuse and Mental Health (division) sets, in accordance with Section 62A-15-1302; and

(b) staffs the statewide mental health crisis line or a local mental health crisis line under the supervision of at least one mental health therapist.

(5) "Local Mental Health Crisis Line" means the same as that term is defined in Subsection 63C-18-102(2).

(6) "Mental Health Crisis" is defined as any intense behavioral, emotional, or psychiatric situation perceived to be a crisis by the individual experiencing the crisis, family, or others who closely observe the individual. The crisis may include a mental health condition that manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention of intervention to result in:

(a) serious jeopardy to the individual's health or well-being; or

(b) a danger to others; or

(c) significantly reduced levels of functioning in primary

activities of daily living.

(7) "Mental Health Therapist" is an individual licensed in Utah under the mental health professional practice act as defined in Subsection 58-60-102(5).

(8) "Statewide mental health crisis line" means the same as that term is defined in Subsection 63C-18-102(3).

(9) "Rapid Follow-up and Referral" involves taking steps during an emergency department visit or before discharge from inpatient care to facilitate immediate access to an outpatient treatment appointment for the patient, preferably within 24-48 hours after discharge. To facilitate rapid referral, it may be helpful to establish agreements with outpatient providers to accept rapid follow-up referrals.

(10) "Warm Hand Off" has a goal to increase the likelihood that a patient will follow up on a referral to one provider from another. Rather than simply providing the name and phone number of a provider, a warm hand-off connects the patient with the new provider before the first appointment.

**R523-17-5. General Provisions.**

(1) The Behavioral Health Crisis Response System is based on the following principles:

(a) cultural competence'

(b) strong community relationships,

(c) the use of peer supports,

(d) the use of evidence based practices,

(e) building on existing foundations with an eye towards innovation,

(f) utilization of an integrated system of care,

(g) outreach to students through school-based clinics,

(h) trauma Informed, and

(i) de-escalation.

(2) Each component within the behavioral health crisis response system must be capable of serving individuals in the context of a behavioral health crisis including:

(a) children, adolescents, adults and older adults,

(b) individuals with co-occurring conditions; including:

(i) mental health conditions,

(ii) substance use disorders,

(iii) medical needs,

(iv) intellectual/developmental disabilities,

(v) physical disabilities,

(vi) traumatic brain injuries, and/or

(vii) Dementia and related neurological disorders.

(c) individuals demonstrating aggressive behavior;

(d) individuals who are uninsured or unable to pay for services, and

(e) individuals who may lack Utah residency or legal immigration status.

(3) Each modality of service within the Behavioral Health Crisis Response System is encouraged to incorporate peer support into the services they provide, when clinically appropriate.

**R523-17-6. Certification Requirements of Crisis Workers.**

(1) The division shall certify that a crisis worker is qualified by training, experience, and certification. Certification will require successful completion of training provided by the division.

(2) Individuals eligible to apply for crisis worker certification include the following:

(a) Individuals licensed under Utah Department of Professional Licensing for any health or behavioral health license;

(b) Individuals with a minimum of bachelors degree in a human service related field;

(c) Individuals certified as a Certified Peer Support Specialist for a minimum of one year;

(d) Individuals certified as Case Managers for a minimum

of one year; or

(e) Individuals certified as Family Resource Facilitator for a minimum of one year.

(3) The training curriculum shall provide at least forty (40) hours of training and shall include, didactic information and skill practice using the following components as they relate to crisis intervention:

(a) Attitudinal Outcomes:

(i) acceptance of persons as different from oneself, and a non-judgmental response toward sensitive issues,

(ii) balances and realistic attitude toward self in the helper role meaning not expecting to "save" all potential suicides by one's own single effort, or to solve all the problems of the distressed person,

(iii) a realistic and humane approach to death, dying,

(iv) self-destructive behavior and other human issues, and

(v) coming to terms with one's own feelings about death and dying in so far as these feelings might deter one from helping others.

(b) Knowledge Areas:

(i) basic suicidology, including suicide assessment of desire, intent, capability, and buffers,

(ii) intervention strategies including active engagement, active rescue, and collaboration, emphasize safety and prevention,

(iii) risk of assaulting others,

(iv) community resources,

(v) consultation process,

(vi) record system and program policies,

(vii) cultural/diversity awareness,

(viii) voluntary and involuntary hospitalization criteria and procedures, and

(ix) psychopathology, psychiatric diagnosis, psychotropic medication, and substance abuse.

(c) Skill Areas:

(i) ability to assess in life-threatening situations, including risk of suicide and/or homicide,

(ii) ability to actively engage,

(iii) ability to mobilize community resources in an efficient and effective manner,

(iv) ability to respond with respect and effectiveness and render assistance to individuals in crisis and distress with appropriate regard to their cultural, racial or ethnic background; their religion or language, their socioeconomic status; or other diversity factors,

(v) provide efficient record keeping and policy implementation (e.g. recording essential notes in succinct form within the same work shift so they are useful to the next worker), and

(vi) use of the consultative process, e.g. knowing who to call under what conditions.

(3) The curriculum methodology shall include but not be limited to:

(a) role playing and other experiential based methods,

(b) use of audiovisual materials, such as simulated recorded calls and videotape,

(c) an opportunity to function as a co-crisis worker with experienced staff before assignment and to work on an independent basis, and

(d) didactic presentation and reading assignments.

(4) In order to maintain crisis worker certification an individual must:

(a) Complete at least 8 hours of continuing education (CEUs) every two (2) years pertaining specifically to crisis services,

(b) shall maintain adequate documentation as proof of compliance with this section, such as a certificate of completion, school transcript, course description, or other course materials,

(c) shall retain this proof for a period of three years after

the end of the renewal cycle for which the continuing education is due; and

(d) at a minimum, the documentation shall contain the following:

(i) date of the course,

(ii) name of the course provider,

(iii) name of the instructor,

(iv) course title,

(v) number of hours of continuing education credit; and

(vi) course objectives.

#### **R523-17-7. Corrective Action of Certified Crisis Worker Certification.**

(1) Each Certified Crisis Worker shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer that becomes aware of a Certified Crisis Worker engaging in unprofessional or unlawful conduct, or has violated the provider code of conduct shall:

(i) immediately take action to review the allegations,

(ii) take steps to ensure that all individuals involved with the allegation are protected, and

(iii) notify the Division within 30 days.

(b) Termination of certification shall be made effective immediately if the alleged violation(s) results in one or more of the following:

(i) personal financial gain through deception, or a business transaction with a client, by the Certified Crisis Worker,

(ii) physical or emotional harm to a person that is caused by the Certified Crisis Worker, or

(iii) a financial loss to a client, the State, or another employee that is caused by the Certified Crisis Worker.

(c) The division shall take the following actions when it becomes aware of a Certified Crisis Worker in violation of the provider code of conduct that does not result in immediate termination:

(i) Within 30 days of becoming aware of the violation(s), the division shall notify the Certified Crisis Worker, in writing, through a Notice of Agency Action specifying the area(s) of noncompliance.

(ii) Within 30 days of receiving a notice of Agency Action, the Certified Crisis Worker shall submit an acceptable written plan to the division explaining how they will achieve compliance.

(iii) All plans shall demonstrate how the Certified Crisis Worker shall be in compliance within 30 days after receiving the Notice of Agency Action.

(iv) If an acceptable plan of action is not received by the division within 30 days of sending the Notice of Agency Action, the Certified Crisis Worker shall be notified that their certification has been suspended until an acceptable plan is submitted to the Division.

(v) A Certified Crisis Worker shall cease providing any and all case management services until a suspension is lifted.

(d) The division shall revoke the certification of any Certified Crisis Worker for the following reasons:

(i) The Certified Crisis Worker fails to provide the division with written evidence of compliance to a plan of action within 30 days after the receiving a Notice of Agency Action that their certification has been suspended.

(ii) The Certified Crisis Worker continues to provide case management services during the period of a suspension; or

(iii) The Certified Crisis Worker receives more than two notices of noncompliance with the Provider Code of Conduct in a one-year period.

(e) Any Certified Crisis Worker whose certification has been revoked may request an informal hearing with the division director or designee, in writing, within 10 business days of

receiving notice of revocation.

(f) The division director or designee shall review the request and determine to uphold, amend or reverse the action within 10 business days, and the division shall inform the Certified Crisis Worker of the decision in writing.

(g) Any Certified Crisis Worker with a revoked certification may not reapply for recertification for a period of twelve months.

(2) If a Certified Crisis Worker fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire, and shall not be renewed until the required CEUs have been completed and submitted to the division for approval.

(3) The crisis worker's certification status shall be posted and available upon request through the division.

### **R523-17-8. Standards for Local Authority Mental Health Crisis Lines.**

(1) If a Local Mental Health Authority (Local Authority) provides for a local mental health crisis line the Local Authority shall:

(a) maintain a 24 hour/7 days per week comprehensive telephonic system capable of assessing any individual experiencing a self-defined crisis situation, leading to appropriate crisis stabilization and making appropriate referrals,

(b) collaborate with the statewide mental health crisis line,

(c) ensure that each individual who answers calls to the local mental health crisis line:

(i) is a mental health therapist and/or Certified Crisis Worker, or

(ii) individuals employed by a Local Authority or the Statewide Crisis Line who is not yet a certified crises worker, and has been hired to provide crisis services as outlined in this rule, can provide crisis services if:

(A) they are working under the supervision of a licensed mental health therapist who is a certified crisis worker, and

(B) they are within 3 months of receiving the certification training required to become a Certified Crisis Worker,

(iii) meets the standards of care and practice established by this rule, and

(iv) has access to a licensed mental health clinician by direct transfer of the call that does not require a call back to the person in crisis if the non-licensed crisis worker cannot stabilize the caller,

(d) ensure that, based on inability to meet needs based on capacity, the calls are immediately routed to the statewide mental health crisis line,

(e) ensure that local authorities have a plan for roll over calls,

(f) ensure that regardless of the time, date, number of individuals trying to simultaneously access the local mental health crisis line, a mental health therapist or crisis worker answers the call:

(i) without the caller waiting on hold,

(ii) being screened by an individual other than a mental health therapist or crisis worker, and

(iii) within 5 rings or 30 seconds, and

(g) ensure the discounted call abandonment rate will not exceed more than 5% of the total volume of calls.

(2) If a Local Mental Health Authority does not provide for a local mental health crisis line they shall use the statewide crisis line as a local resource.

(3) Local Authorities and the statewide crisis line shall develop and implement a plan for collaboration and coordination of care for ongoing support for individuals accessing the statewide crisis line. This plan should:

(a) be created collaboratively between the Local Authority and the statewide crisis line, and

(b) shall include the following components at a minimum:

(i) policies and procedures for coordination,

(ii) timeline for care transitions that includes process for warm hand off, appointment scheduling, and follow up,

(iii) clear expectations of communication between agencies including contact lists and shared resources lists, and

(iv) a plan for regular review of data to ensure collaboration and quality of continuity of care.

### **R523-17-9. Minimum Standards of Care and Practice.**

(1) Certification or accreditation standards for crisis lines shall include:

(a) The crisis line providing proof of certification/accreditation from one of the following:

(i) American Association of Suicidology (AAS),

(ii) CONTACT USA,

(iii) Alliance of Information and Referral Systems (AIRS),

(iv) The Joint Commission,

(v) Commission on Accreditation of Rehabilitation Facilities (CARF),

(vi) Council on Accreditation (COA),

(vii) Utilization Review Accreditation Commission (URAC), or

(viii) DNV Healthcare, Inc.

(b) Agencies shall provide State/county licensure, as approved by the division Administrator or designee.

(c) The telephone crisis service must provide:

(i) screening and triage,

(ii) psycho-social support,

(iii) connection to appropriate resources,

(iv) follow-up capability to callers as clinically appropriate.

(d) 24 hour/7 days per week telephone crisis services that are staffed by skilled professionals capable of assessing and making culturally competent, appropriate referrals,

(e) the use trauma-informed screenings and assessments, and incorporate this information into safety planning, referrals and follow-up interventions, and

(f) the initiation of mobile crisis services when available that are linked with walk-in crisis service facilities when available.

(2) Suicide Risk Assessment Standards shall include the National Suicide Prevention Lifeline Suicide Risk Assessment Standards minimum requirements.

(3) Imminent Risk Policies shall include:

(a) Crisis lines shall adopt the adoption of the National Suicide Prevention Lifeline Policy for Helping Callers at Imminent Risk of Suicide

(4) Follow Up Policies that shall include:

(a) crisis lines maintaining and implementing a policy detailing follow-up procedures including but not limited to:

(i) safe-care transitions,

(ii) rapid referrals,

(iii) caring contacts, and

(iv) care bridging strategies.

(b) This policy shall detail how crisis lines will work with community partners and the statewide crisis line.

(5) Warm Hand Off Policies shall include:

(a) agencies maintaining written procedure defining and detailing a "warm hand off" process that allows for unique adaptations for each Local Authority crisis service structure, in collaboration with the statewide crisis line.

(b) This initial procedure for a Warm Hand Off shall read as follows:

(i) if clinically indicated, provide a warm handoff to Local Authorities providers or other identified providers of care or care managers with an identified health plan. A warm handoff may include:

(A) a conference call or other direct communication with the Local Authority provider, other provider or care manager to

arrange immediate crisis support and scheduling an appointment for follow up support.

(B) if other needs are expressed by callers then additional resources may be offered to help access local recovery oriented support services as needed,

(C) coordination with each local authority, regarding preferred communication and resources access as uniquely adapted to each local community, and

(D) a warm hand off will be done via conference call to facilitate a personal introduction between a Lifeline caller and their local behavioral health treatment providers or care managers, as well as the exchange of pertinent information, to promote the continuity of care.

(ii) The elements of a successful warm hand off shall include:

(A) orienting the caller as to what to expect,

(B) a positive provider to provider communications, and

(C) provision of accurate information regarding the caller's current condition, treatment and service needs, and safety goals.

(iii) The steps to initiate a warm hand off include:

(A) assessing callers for their level of acuity and need,

(B) offer to provide a person to person introduction to a representative in their local area,

(C) explain the conference call process to the caller,

(D) contact the predetermined designated number for provider in their local area,

(E) communicate the caller's situation and needs,

(F) introduce the caller and remain on the line as needed to facilitate the conversation, and

(G) in the event that a warm handoff is clinically indicated and the individual is not able to receive a warm handoff for any reason, a minimum of one follow up "Caring Connection" shall be provided within 72 hours of initial contact, if contact information was able to be collected for the caller.

(6) Crisis Line Community Collaboration and Coordination Policies shall include:

(a) a published plan in place that outlines community resources available,

(b) a collaboratively created plan published that outlines the plan for community collaboration with the following partners at minimum:

(i) Law Enforcement,

(ii) hospitals (Emergency Departments),

(iii) local mental health and substance abuse authorities,

(iv) schools, and

(v) any other crisis services in the local community.

#### **R523-17-10. Statewide Mental Health Crisis Line Standards.**

(1) The 24 hour/7 days per week statewide crisis Line shall adhere to the following standards:

(a) collaborate with Local Authorities running local crisis line,

(b) the statewide crisis line shall develop, and implement a plan for collaboration and coordination of care for ongoing support for individuals accessing services with Local Authorities,

(c) plans should be created collaboratively between the Local Authority and the statewide crisis line,

(d) plans shall include the following components at a minimum:

(i) policies and procedures for coordination,

(ii) timelines for care transitions that includes process for warm hand off, appointment scheduling, and follow up,

(iii) clear expectations of communication between agencies including contact lists and shared resources lists,

(iv) a plan for regular review of data to ensure quality of continuity of care.

(v) assurance that each individual who answers calls to the

statewide crisis line:

(A) is a mental health therapist and/or Certified Crisis Worker,

(B) meets the standards of care and practice established by this rule, and

(C) has access to a licensed mental health clinician by direct transfer of the call that does not require a call back to the person in crisis if the non licensed crisis worker cannot stabilize the caller.

(vi) assurance that regardless of the time, date, number of individuals trying to simultaneously access the local mental health crisis line a mental health therapist or crisis worker answers the call:

(A) without the caller waiting on hold,

(B) being screened by an individual other than a mental health therapist or crisis worker, and

(C) within 5 rings or 30 seconds,

(vii) the discounted call abandonment rate will not exceed more than 5% of the total volume of calls,

(viii) 90% of statewide crisis line calls shall be answered in state as reported by the National Suicide Prevention Lifeline call data, and

(ix) assurance that the statewide crisis line has the capacity to accept all calls that local mental health crisis lines route to the statewide crisis line.

#### **R523-17-11. Minimum Standards of Care and Practice for the Statewide Crisis Line.**

(1) Certification or accreditation shall include:

(a) proof of certification/accreditation from one of the following:

(i) American Association of Suicidology (AAS),

(ii) CONTACT USA,

(iii) Alliance of Information and Referral Systems (AIRS)

(iv) The Joint Commission on Accreditation of Rehabilitation Facilities (CARF),

(v) Council on Accreditation (COA),

(vi) Utilization Review Accreditation Commission (URAC), or

(vii) DNV Healthcare, Inc.

(b) State/county licensure, as approved by the division Administrator or designee,

(c) telephone crisis service must provide:

(i) screening and triage,

(ii) psycho-social support, and

(iii) connection to appropriate resources.

(d) follow-up capability to callers as clinically appropriate,

(e) services that are staffed by skilled professionals capable of assessing and making culturally competent, appropriate referrals,

(f) the use of trauma-informed screenings and assessments and incorporating this information into safety planning, referrals and follow-up interventions,

(g) the initiation of mobile crisis services when available that are linked with walk-in crisis service facilities when available.

(2) Suicide Risk Assessment Standards shall include the adoption of the National Suicide Prevention Lifeline Suicide Risk Assessment Standards minimum requirements.

(3) Imminent Risk Policies shall include the adoption of the National Suicide Prevention Lifeline Policy for Helping Callers at Imminent Risk of Suicide

(4) Follow Up Policies shall include:

(a) maintaining and implementing a policy detailing follow-up procedures including but not limited to:

(i) safe-care transitions,

(ii) rapid referrals,

(iii) caring contacts, and

(iv) care bridging strategies.



(b) This policy shall detail how the Statewide Crisis Line will work with community partners and the local crisis lines.

(5) Warm Hand-off Policies shall include:

(a) maintaining written procedure defining and detailing a "warm hand off" process that allows for unique adaptations for each LA crisis service structure, in collaboration with the statewide crisis line.

(b) This initial procedure for a Warm Hand Off shall read as follows:

(i) If clinically indicated, provide a warm handoff to LAs providers.

(ii) A warm handoff may include:

(A) a conference call or other direct communication with the LA provider to arrange immediate crisis support and scheduling an appointment for follow up support,

(B) if other needs are expressed by callers then additional resources may be offered to help access local recovery oriented support services as needed, and

(C) coordination with each local authority regarding preferred communication and resources access as uniquely adapted to each local community.

(iii) A warm hand off will be done via conference call to facilitate a personal introduction between a Statewide Crisis Line caller and their local behavioral health treatment providers, as well as the exchange of pertinent information, to promote the continuity of care.

(iv) The elements of a successful warm hand off include:

(A) orienting the caller as to what to expect,

(B) positive provider to provider communications, and Providing accurate information regarding the caller's current

(C) condition, treatment and service needs, and safety goals.

(v) The steps to initiate a warm hand off includes:

(A) assessing callers for their level of acuity and need,

(B) offer to provide a person to person introduction to a representative in their local area,

(C) explain the conference call process to the caller,

(D) contact the predetermined designated number for provider in their local area,

(E) communicate the caller's situation and needs, and

(F) introduce the caller and remain on the line as needed to facilitate the conversation.

(vi) In the event that a warm handoff is clinically indicated and the individual is not able to receive a warm handoff for any reason, a minimum of one follow up "Caring Connection" shall be provided within 72 hours if contact information was able to be collected for the caller.

(6) Crisis Line Community Collaboration and Coordination plan shall include:

(a) a published plan in place that outlines community resources available,

(b) a plan published that outlines the plan for community collaboration with the following partners at minimum:

(i) Local Authorities including Mobile Crisis Outreach Teams,

(ii) law enforcement,

(iii) hospitals (Emergency Departments),

(iv) health plans,

(v) schools, and

(vi) any other crisis services in the local community.

(c) The Statewide Crisis Line shall enter into MOU's with each Local Authority operating a Crisis Line and/or Mobile Crisis Outreach Teams and shall make good faith efforts to enter into MOU's with parties described in R523-17-11 (6b).

to provide such services.

(2) Participating organizations including Local Authorities and the statewide crisis line shall also allow representatives from the division and from the local authorities as authorized by the division to monitor services. Such visits may be announced or unannounced.

**KEY: crisis response services, crisis worker certification, statewide crisis line standards**  
**April 22, 2019**

**62A-15-1302(2)**

#### **R523-17-12. Division Oversight of Program.**

(1) The division may enter and survey the physical facility, program operation, and review curriculum and interview staff to determine compliance with this rule or any applicable contract

**R523. Human Services, Substance Abuse and Mental Health.****R523-18. Mobile Crisis Outreach Teams Certification Standards.****R523-18-1. Authority.**

(1) This rule establishes guidelines, procedures and standards for the establishment of statewide Mobile Crisis Outreach Teams (MCOT) as directed in Subsection 62A-15-116(4) and Section 62A-15-1402.

**R523-18-2. Purpose.**

(1) This rule is enacted for the purpose of promoting the availability of comprehensive behavioral health crisis services throughout the state, by:

- (a) creating standards of certification, care and practice for statewide mental health crisis response system using the MCOT model of care,
- (b) outlining the responsibilities of MCOTs including interaction with civil commitment, and
- (c) awarding grants as directed by Subsection 62A-15-116(4), by application through qualified Local Mental Health Authorities.

**R523-18-3. Definitions.**

(1) "Assessment" means a formal and continuous process of collection and evaluating information about an individual to ascertain whether or not a patient is functioning at a healthy psychological, social, or developmental level and aids in service planning, treatment and referral. Assessments establish justification for interventions, services and referrals.

(2) "Certified Crisis Worker" means an individual who meets the standards of certification that the Substance Abuse and Mental Health (division) sets, in accordance with Subsection R523-17-4.

(3) "Crisis Stabilization" means direct mental health care to non-hospitalized individuals experiencing an acute crisis of a psychiatric nature that may jeopardize their current community living situation, or put them at risk of psychiatric hospitalization by:

- (a) providing emotional support and safety, and
- (b) mobilizing community resources, the individuals support system, family members, and others for ongoing maintenance, and rehabilitation.

(4) "Designated Examiner" is defined in Subsection 62A-15-602(5).

(5) "Emergency medical service personnel" means an individual who provides emergency medical services to a patient and is required to be licensed under Section 26-8a-302, which includes:

- (a) paramedics,
- (b) medical directors of a licensed emergency medical service provider,
- (c) emergency medical service instructors,
- (d) and other categories established by the committee.

(6) "MCOT certification" means the certification created in Section R523-18-5.

(7) "MCOT personnel" means a licensed mental health therapist as defined in Subsection 58-60-102(5) and a certified crisis worker.

(8) "Mental Health Crisis" means any intense behavioral, emotional, or psychiatric situation perceived to be a crisis by the individual or family experiencing the crisis, or others who closely observe the individual where:.

(a) the crisis manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:

- (i) serious jeopardy to the individual's health or well-being, or

(b) a danger to others, or

(c) significantly reduced levels of functioning in primary activities of daily living, including interfering with the ability to go to school, work, and engage in meaningful relationships.

(9) "Mental health crisis services" means mental health services and on-site interventions that a person renders to an individual suffering from a mental health crisis. This includes the provision of:

- (a) safety and care plans,
- (b) stabilization services that are offered for a minimum of 60 days, and
- (c) referrals to other community resources.

(10) "Mobile Crisis Outreach Team" means a mobile team of medical and MCOT personnel that provide mental health crisis services and, based on the individual circumstances of each case, coordinates with local law enforcement, emergency medical service personnel, and other appropriate state or local resources. Medical professionals may serve in a response or oversight role on the team.

(11) "Mental Health Officer" means an individual who is designated by a Local Mental Health Authority as qualified by training and experience in the recognition and identification of mental illness.

(12) "Mental Health Therapist" means an individual licensed in Utah under the mental health professional practice act as defined in Subsection 58-60-102(5).

(13) "Peer Support Specialist (PSS)" means an individual who meet the requirements outlined in R523-5.

(14) "Family Resource Facilitator (FRF)" means an individual who meets the requirements outlined in R523-6.

**R523-18-4. General Provisions.**

(1) MCOT services are based on the following principles:

- (a) cultural competence,
- (b) strong community relationships,
- (c) the use of peer supports,
- (d) the use of evidence based practices,
- (e) building on existing foundations with an eye towards innovation,
- (f) utilization of an integrated system of care,
- (g) outreach to students through school-based clinics,
- (h) trauma informed care,
- (i) de-escalation,
- (j) access to supports and services is timely,
- (k) services are provided in the least restrictive manner possible,

(l) crisis is defined by the individual or family,

(m) treatment plans are strengths-based,

(n) helping the individual and family to regain a sense of control and safety is a priority, and

(o) embed elements of Zero Suicide.

(2) MCOTs must be capable of serving in the context of a crisis as outlined below:

- (a) children, adolescents, adults and older adults,
- (b) individuals with co-occurring conditions including:
  - (i) mental health conditions,
  - (ii) substance use disorders,
  - (iii) medical needs,
  - (iv) intellectual/developmental disabilities,
  - (v) physical disabilities,
  - (vi) traumatic brain injuries; and/or,
  - (vii) dementia and related neurological conditions.
- (c) individuals demonstrating aggressive behavior,
- (d) individuals who are uninsured or unable to pay for services, and
- (e) individuals who may lack Utah residency or legal immigration status.

(3) MCOTS shall encourage each modality of service within the Crisis Response System to incorporate peer support

into the services they provide, when clinically appropriate.

**R523-18-5. Minimum Guidelines and Standards of Care.**

(1) Mobile crisis services provide a timely in-person response to a crisis in the community. Mobile crisis services shall collaborate with local and statewide crisis line services, and any additional crisis response services, including the stabilization and mobile response services if available.

(2) When a MCOT is dispatched from the statewide crisis line, the statewide crisis line staff shall provide whenever possible the:

- (a) the name of individual in crisis,
- (b) their date of birth,
- (c) the presenting problem as demonstrated through the individual's current behaviors),
- (d) the location of the individual needing services,
- (e) any history of violence and/or substance use,
- (f) the presence of any weapons and/or dogs in the house,

and  
(g) the need for a coordination plan to include police assistance, and/or family's willingness to helping coordinate services while accounting for all relevant safety and security issues, so the MCOT can provide a timely face to face response.

(3) When law enforcement requests response from a MCOT, and is staying on scene, it is important to provide as rapid as a response as possible which may mean, responding to the crisis with limited information.

(4) A MCOT must have the capacity to:

- (a) intervene wherever the crisis occurs,
- (b) serve individuals unknown to the system,
- (c) coordinate multiple simultaneous requests for services and,
- (d) work closely with police, EMS, Fire, dispatch, crisis hotlines, schools, hospital emergency departments, and other related agencies.

(5) A MCOT must operate 24 hours per day, 7 days per week, and 365 days per year in providing community-based crisis intervention, screening, assessment, and referrals to appropriate resources.

(6) In screening the individual in crisis, the MCOT must collect at least the following information:

- (a) identifying information,
  - (b) the chief complaint/presenting problem,
  - (c) acute medical concerns and chronic health conditions,
- and
- (d) current healthcare providers.

(7) The MCOT must administer an ongoing assessment, if clinically indicated by the initial screening, that shall include:

- (a) any imminent danger to the individual in crisis through potentially lethal means of harm to one's self or others.
- (b) risk for suicide using the Columbia Suicide Severity Rating Scale (C-SSRS) or another empirically validated instrument,
- (c) the individual's emotional status and imminent psychosocial needs,
- (d) individual strengths and available coping mechanisms,
- (e) resources that can increase service participation and success, and
- (f) the most appropriate and least restrictive service alternative for the individual, and the referral mechanisms and procedures to access services.

(8) Following the assessment, if there is risk for harm to self or others, the MCOT shall engage the person to establish a crisis response plan using:

- (a) Crisis Response Planning (CRP),
- (b) Stanley Brown Safety Plan, or
- (c) another evidenced based safety plan/crisis prevention practice.

(9) If clinically indicated access ER or other crisis

receiving facility to address ongoing safety concerns and for further evaluation.

(10) A MCOT must be staffed by skilled and licensed mental health professionals.

(11) A MCOT must understand the emergency civil commitment process as described in Section 62A-15-629, and one of the members must be either a Designated Examiner or Mental Health Officer to facilitate civil commitment should that be the indicated course of action for the safety of the individual, family or the community.

(12) A MCOT will preferably utilize Certified Peer Support Specialists and Family Resource Facilitators, in conjunction with a Mental Health Therapist when deploying for mobile crisis outreach.

(13) A MCOT shall respond to individuals in the community who are in crisis with the goal of resolving the crisis in the least restrictive manner and setting, including:

- (a) reducing inpatient treatment admissions and Emergency Department visits if appropriate,
- (b) increasing jail diversions, and
- (c) reducing law enforcement involvement while maintaining public safety.

(14) A MCOT shall collaborate with stakeholders involved in the crisis service delivery system and partner to resolve service delivery concerns.

(15) MCOT providers shall have a published plan in place that outlines triage policies and coordination of crisis response services with community stakeholders.

(a) The plan shall address community collaboration with the following partners at minimum:

- (i) Local Mental Health and Substance Abuse Authorities,
- (ii) SMR providers,
- (iii) local law enforcement,
- (iv) fire departments,
- (v) dispatch,
- (vi) hospital emergency departments,
- (vii) schools,
- (viii) EMS,
- (ix) Department of Human Services agencies, and
- (x) other social service partners, including health plans and other crisis services in the local community.

(16) The MCOT provider shall enter into MOU's with each Local Mental Health and Substance Abuse Authority operating a crisis line in their region, and the Statewide Crisis Line. The MOU shall include the following elements at a minimum:

- (a) data sharing process between Statewide Crisis Line, Local Authority and MCOT provider including data on number of callers from region MCOT serves,
- (b) mobile deployments from the Statewide Crisis Line,
- (c) a clear procedure for coordination between the Statewide Crisis Line and MCOT provider, for deploying MCOT services for individuals in need of MCOT services who have called into the Statewide Crisis Line,
- (d) data and a process for warm hand offs between Statewide Crisis Line, MCOT, and Local Authorities to support individuals in ongoing services; and
- (e) procedures for case consultation on services, high utilizers, and collaboration.

**R523-18-6. MCOT Personnel and Team Certification.**

(1) The Following requirements shall be met in order for an agency to receive a certification of their MCOT:

(a) personnel shall consist of a minimum of two members, one of which shall be a:

- (i) Mental Health Therapist who is a Certified Crisis Worker, and is either a:
  - (A) Designated Examiner, or
  - (B) a Mental Health Officer.

(b) The second member shall be a Certified Crisis Worker, who is preferably a Certified Peer Support Specialist or a Family Resource Facilitator.

(c) All teams shall have access to a Designated Examiner and a medical professional for consultation during the MCOT response.

(2) Agencies shall apply for participation and funding in MCOT activities through a Request For Proposal process that requires:

(a) submitting a plan that describes service delivery and team make-up,

(b) submitting a plan for meeting minimum guidelines and standards of care as outlined in this rule, and

(c) evidence that the statutory match requirement of 20% will be met.

(3) The division director or designee shall determine if an agency is granted an exception to any of the above requirements, and still obtain certification based on that agency's submitted plan.

(4) The division shall provide certification to applicant agencies if review of the submitted materials demonstrate that the plan of care and team make up meet the guidelines set forth in this rule.

#### **R523-18-7. Division Oversight of Programs.**

(1) The division may enter and survey the physical facility, program operations, and review curriculum and interview staff of a certified MCOT agency, to determine compliance with this rule or any applicable contract to provide such services.

(2) Participating organizations including Local Authorities and the Statewide Crisis Line shall, allow representatives from the division and from the local authorities as authorized by the division to monitor services. Such visits may be announced or unannounced.

#### **R523-18-8. Corrective Action of Certification.**

(1) Each MCOT shall maintain its certification by meeting the guidelines set forth in this rule.

(a) If the division becomes aware of an MCOT that has violated the conditions of its certification through a complaint or site visit survey, the division shall:

(i) immediately take action to review the allegations,

(ii) take steps to ensure that all consumers involved with the allegation are protected, and

(iii) notify the agency under investigation of its findings within 30 days or less depending on the type of finding.

(2) The division shall take the following actions against the MCOT Certification of an agency found to be in non-compliance with the guidelines established in this rule:

(a) For major non-compliance issues, defined as conditions that affect the imminent health, safety, or well-being of individuals, the division shall require:

(i) submission of a written corrective action plan completed by the agency immediately that ensure compliance being achieved within 24 hours or less.

(ii) if compliance is not possible within a 24 hour time period, the MCOT Certification shall be terminated until the major non-compliant issue is resolved.

(b) For a significant non-compliance issue defined as a non-compliance in required training, paperwork, and/or documentation that is so severe or pervasive as to jeopardize the effectiveness of services, the division shall require:

(i) submission of a written corrective action plan completed by the agency within 10 working days that identifies the steps it will take to rectify the issue within 30 days of receipt of the draft copy of the findings report made by the division.

(ii) if compliance is not verified by the division after a 30 day time period, the MCOT Certification shall be suspended, revoke, or not renewed until the significant non-compliant issue

is resolved.

(c) for a minor non-compliance issue defined as a relatively small in scope infraction that does not impact client well-being, the division shall require:

(i) submission of a written corrective action plan completed within 15 working days that identifies the steps the agency will take to rectify the issue within 60 days of receipt of the draft findings report made by the division.

(ii) if compliance is not verified by the division after a 60 day time period, the MCOT Certification shall be suspended, revoke, or not renewed until the minor non-compliant issue is resolved.

(d) For a deficiency defined as an MCOT not being in full compliance with the conditions of certification, but the deficiency discovered is not severe enough to be categorized as a non-compliance issue, the division shall require:

(i) submission of a written corrective action plan without a formal timeline, but is negotiated between the division and the agency being investigated.

(ii) If the deficiency continues to be unresolved past the date of completion, the finding shall be classified as a minor non-compliance issue, and corrective action shall follow the guidance outlined in R523-18-8(2)(c).

(3) Any agency that has had its MCOT Certification revoked suspended, not renewed or not granted may request an informal hearing with the division director or designee, in writing, within 10 business days of receiving notice of corrective action.

(a) The division director or designee shall review the request and determine to uphold, amend or reverse the action within 10 business days, and the division shall inform the agency of the decision in writing.

(4) All MCOT Certification statuses shall be maintained by the division, and shall be made available upon written request.

**KEY: mobile crisis outreach team, MCOT standards, statewide crisis response standards  
April 22, 2019**

**62A-15-116(4)  
62A-15-1402**

**R527. Human Services, Recovery Services.****R527-394. Posting Bond or Security.****R527-394-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to meet the requirements of 45 CFR 303.104 that the office develops guidelines to determine whether posting bond or security is appropriate on a support case.

**R527-394-2. Criteria.**

The Office of Recovery Services may petition the court to require the obligor to post bond or provide other security for the payment of a support debt if:

1. the Office determines the obligor has or has had the ability to pay but has failed or refused to pay, and;

2. the obligor has the ability to provide bond or security and to pay court ordered child support, and;

3. the Office determines that income withholding and garnishment are not viable or cost effective methods of collecting the support obligation, and;

4. the obligor has not made a payment during the period of 90 days prior to the time of a petition to the court in accordance with section (1) above, and;

5. the circumstances of the case include one of the following conditions:

a. the obligor is self-employed, voluntarily unemployed or underemployed, or receives income-in-kind, or;

b. the obligor realizes income from seasonal or other irregular employment or from commissions, or;

c. there is reason to believe that the obligor is preparing to leave the state.

**KEY: child support, bonding requirements****July 13, 2009****Notice of Continuation April 29, 2019****62A-1-111****62A-11-107****62A-11-321****45 CFR 303.104**

**R590. Insurance, Administration.****R590-93. Replacement of Life Insurance and Annuities.****R590-93-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A, Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive, and Subsection 31A-22-429, which gives the commissioner authority to require statements regarding existing insurance and adopt the notice regarding replacement.

**R590-93-2. Purpose and Scope.**

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of Section 31A-22-429 and this rule.

(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.

(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to

policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

**R590-93-3. Definitions.**

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the

National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

- (i) current death benefit;
- (ii) annual contract premium;
- (iii) current cash surrender value;
- (iv) current dividend;
- (v) application of current dividend; and
- (vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

- (i) the beginning and end date of the current report period;
- (ii) the policy value at the end of the previous report period and at the end of the current report period;
- (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;
- (iv) the current death benefit at the end of the current report period on each life covered by the policy;
- (v) the net cash surrender value of the policy as of the end of the current report period; and
- (vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

#### **R590-93-4. Duties of Producers.**

A producer shall comply with Section 31A-22-429.

#### **R590-93-5. Duties of Insurers that Use Producers.**

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of Section 31A-22-429 and this rule that shall include at least the following:

- (a) inform its producers of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into all relevant producer training manuals prepared by the insurer;
- (b) provide to each producer a written statement of the

company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

- (a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
- (b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
- (c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
- (d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and
- (e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:

- (a) whether the applicant has existing policies or contracts; and

(b) whether the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract;

(4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of an existing policy or contract, a completed notice regarding replacements as contained in Appendix A or Appendix C;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection 31A-22-429(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the signed statement with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection 31A-22-429(5) are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

#### **R590-93-6. Duties of Replacing Insurers that Use Producers.**

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed notice, the replacing insurer shall send a printed copy of the electronically executed notice to the applicant within five business days of the date the notice is received by the company;

(c) notify any other existing insurer that may be affected

by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notice regarding replacement required in Subsection 31A-22-429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A-22-429(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A-22-429(4); and

(b) within ten business days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A-22-429(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

#### **R590-93-7. Duties of the Existing Insurer.**

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) within 5 business days of receiving a replacement notice, send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or

contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

#### **R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.**

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

#### **R590-93-9. Violations and Penalties.**

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or

(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after



indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

**R590-93-10. Relationship to Other Statutes and Rules.**

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

**R590-93-11. Severability.**

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

**R590-93-12. Enforcement Date.**

The commissioner will begin enforcing the provisions of this revised rule as of the effective date of the changes.

**KEY: life insurance, annuity replacement**

**June 11, 2013**

**Notice of Continuation April 3, 2019**

**31A-2-201**

**31A-23a-402**

**31A-22-429**

**R590. Insurance, Administration.****R590-98. Unfair Practice in Payment of Life Insurance and Annuity Policy Values.****R590-98-1. Authority.**

This rule is adopted pursuant to Section 31A-2-201 which empowers the commissioner to make rules necessary to implement Title 31A, and pursuant to Section 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

**R590-98-2. Scope.**

This rule shall apply to all persons transacting insurance under Title 31A.

**R590-98-3. Purpose.**

The purpose of this rule is to require a prompt response to policyholder requests for policy values and limit the exercise of the statutory deferral option to situations in which the financial stability of the insurer is at risk.

**R590-98-4. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions apply for the purpose of this rule:

A. "Policy Values" means the values to which the policyholder is entitled upon request for policy loans, withdrawals, or the surrender of the policy and include cash values, accumulated dividends, coupons and other values of a similar nature.

B. "Deferral" means the withholding or delay in payment of policy values to the policyholder.

C. "Deferral" does not include the withholding or delay in payment to a policyholder of variable life insurance and variable annuity payments when the value of investment assets on which payments are based cannot be obtained because:

(1) the Securities and Exchange Commission (SEC) has restricted trading;

(2) the stock exchange is closed; or

(3) the SEC permits deferral to protect the policyholder.

D. "Policyholder" shall include, in addition to the definition in 31A-1-301, a certificate holder under a group policy.

**R590-98-5. Unfair or Deceptive Acts or Practices.**

The following are hereby defined as unfair or deceptive acts or practices:

A. Failing to comply with a policyholder request for policy values within 20 days of receipt of such request.

B. Exercising the nonforfeiture deferral option of Section 31A-22-408(2), 31A-22-409(3)(d), or 31A-22-420(5), in response to a request for policy values unless the financial stability of the insurer is at risk.

**R590-98-6. Requirements.**

A. Before an insurer exercises the right to defer the payment of any policy values, the insurer must file a written request with the commissioner. The request must include an explanation of the reason for such action, the steps to be taken by the company to alleviate the situation, the manner in which the deferment is being imposed fairly and equitably on all policyholders, the notice to policyholders as to why the company is taking such action and the anticipated date on which the policy values are expected to be available.

B. If the policy does not specify policy values between policy anniversaries, such policy values may be the values shown in the policy nonforfeiture value tables as of the end of the policy year or may be computed by the interpolation of values between policy years. If the former method is used, the company may deduct from the policy value any premiums

required to pay the policy to the next succeeding anniversary date. In no event, may premiums be deducted that will advance the paid-to date past the next succeeding anniversary date.

C. No surrender or service charge assessed by the company will be deducted from the policy values unless specifically provided in the policy.

D. With consent of the policyholder, companies may process a policy loan in lieu of cash surrender as a means to conserve business, but only if the following criteria are strictly adhered to:

(1) The computation of policy values and premium deductions, if any, will be calculated on the same basis as enumerated in B above.

(2) The policyholder must be informed fully and concisely as to the reasons the company is sending the proceeds of a policy loan as opposed to the cash surrender value, an explanation as to the effect the loan will have upon interest charges, premiums, and death benefits, and the procedures for the repayment of the loan.

(3) If a policy loan check is issued in lieu of cash surrender values, the loan shall be processed within 20 days of receipt of the request to surrender. The check for policy loan values must be immediately negotiable. A stamped, self-addressed envelope and a cash surrender form must accompany the loan value check, together with appropriate instructions as to how the policyholder should proceed to obtain the full policy surrender value. A request for the balance of the cash surrender value must be processed within ten days of receipt of such request.

**R590-98-7. Penalty.**

Insurers found in violation of this rule shall be subject to revocation of the Certificate of Authority or such other penalty as determined by the commissioner in accordance with law.

**R590-98-8. Separability.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**R590-98-9. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date.

**KEY: insurance law****January 31, 2006****Notice of Continuation April 3, 2019****31A-2-201****31A-23a-402**

**R590. Insurance, Administration.****R590-126. Accident and Health Insurance Standards.****R590-126-1. Authority.**

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

- (1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;
- (2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;
- (3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health policies;
- (4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;
- (5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;
- (6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and
- (7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

**R590-126-2. Purpose and Scope.**

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This regulation applies to:

(i) all individual accident and health insurance policies and group supplemental health policies and certificates, delivered or issued for delivery in this state on and after January 1, 2006, that are not specifically exempted from this regulation, regardless of:

- (A) whether the policy is issued to an association; a trust; a discretionary group; or other similar grouping; or
- (B) the situs of delivery of the policy or contract; and
- (ii) all dental plans and vision plans.

(b) This rule shall not apply to:

- (i) employer accident and health insurance, as defined in Section 31A-22-502;
- (ii) policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation;
- (iii) Medicare supplement policies subject to Section 31A-22-620;
- (iv) civilian Health and Medical Program of the Uniformed Services, Chapter 55, title 10 of the United States Code, CHAMPUS supplement insurance policies; or
- (v) a health benefit plan that complies with R590-277, Managed Care Health Benefit Plan Policy Standards.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

**R590-126-3. Definitions.**

In addition to the definitions of Section 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of

description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license. Adult Day Care facility may not be defined more restrictively than providing continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Conditionally Renewable" means renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health.

(6) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(7) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

- (i) to correct damage caused by injury or sickness;
- (ii) for reconstructive treatment following medically necessary surgery;
- (iii) to provide or restore normal bodily function; or
- (iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(8) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(9) "Disability Income" shall mean income replacement as defined in Section 31A-1-301.

(10) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid under the policy.

(11) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(12) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(13) "Group Supplemental Health Insurance" means group accident and health insurance policies and certificates providing hospital confinement indemnity, accident only, specified disease, specified accident or limited benefit health coverage.

(14) "Guaranteed Renewable" means renewal cannot be declined by the insurance company for any reasons, but the insurance company can revise rates on a class basis.

(15) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(16) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(17) "Home Health Care" shall mean services provided by a home health agency.

(18) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(19) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(20) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(21) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(22) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(23) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering

potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(24) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(25) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(26) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(27) "Non-Cancelable" means renewal cannot be declined nor can rates be revised by the insurance company.

(28) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(29) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(30) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(31) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(32) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(33) "Optionally Renewable" means renewal is at the option of the insurance company.

(34) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of; the major, important, or essential duties of employment or occupation; customary duties of a homemaker or dependent; or may be related to a percentage of time worked or to a specified number of hours or to compensation.

(35) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(36) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(37) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of

medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(38) "Preexisting Condition."

(a) Except as provided in Section (b), a preexisting condition shall not be defined more restrictively than the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(b) A specified disease insurance policy shall not define preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(39) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(40) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements which is licensed and operating within the scope of such license.

(41) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the major, important, or essential duties of employment or occupation, or to the inability to perform all usual duties for as long as is usually required.

(42) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(43)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(44) "Sickness" means illness, disease, or disorder of an insured person.

(45) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(46) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(47)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar

import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(48)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(49) "Waiting Period" shall mean "Elimination Period."

#### **R590-126-4. Prohibited Policy Provisions.**

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

(i) adenoids;

(ii) appendix;

(iii) disorder of reproductive organs;

(iv) hernia;

(v) tonsils; and

(vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not

exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured person unless the preexisting condition is specifically and expressly excluded.

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;
- (d) administrative exams and services;
- (e) alcoholism and drug addictions;
- (f) allergy tests and treatments;
- (g) aviation;
- (h) axillary hyperhidrosis;
- (i) benefits provided under:
  - (i) Medicare or other governmental program, except Medicaid;
  - (ii) state or federal worker's compensation; or
  - (iii) employer's liability or occupational disease law.
- (j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;
- (k) charges for appointments scheduled and not kept;
- (l) chiropractic;
- (m) complementary and alternative medicine;
- (n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;
- (o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
- (p) custodial care;
- (q) dental care or treatment, except dental plans;
- (r) dietary products, except as required by R590-194;
- (s) educational and nutritional training, except as required by R590-200;
- (t) experimental and/or investigational services;
- (u) felony, riot or insurrection, when the insured is a voluntary participant;
- (v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;
- (w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;
- (x) gene therapy;
- (y) genetic testing;
- (z) hearing aids, and examination for the prescription or fitting thereof;
- (aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

- (bb) incarceration, with respect to disability income policies;
  - (cc) infertility services, except as required by R590-76;
  - (dd) interscholastic sports, with respect to short-term nonrenewable policies;
  - (ee) mental or emotional disorders;
  - (ff) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;
  - (gg) nuclear release;
  - (hh) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;
  - (ii) pregnancy, except for complications of pregnancy;
  - (jj) refractive eye surgery;
  - (kk) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;
  - (ll) respite care;
  - (mm) rest cures;
  - (nn) routine physical examinations;
  - (oo) service in the armed forces or units auxiliary to it;
  - (pp) services rendered by employees of hospitals, laboratories or other institutions;
  - (qq) services performed by a member of the covered person's immediate family;
  - (rr) services for which no charge is normally made in the absence of insurance;
  - (ss) sexual dysfunction;
  - (tt) shipping and handling, unless otherwise required by law;
  - (uu) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;
  - (vv) telephone/electronic consultations;
  - (ww) territorial limitations outside the United States;
  - (xx) terrorism, including acts of terrorism;
  - (yy) transplants;
  - (zz) transportation;
  - (aaa) treatment provided in a government hospital, except for hospital indemnity policies;
  - (bbb) war or act of war, whether declared or undeclared;
- or
- (ccc) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

#### **R590-126-5. General Requirements.**

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's

death the spouse of the insured shall become the insured.

(c) The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy, so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Cancellation, Renewability, and Termination.

The terms "conditionally renewable," "guaranteed renewable," "noncancellable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(2).

(a) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(b) Guaranteed renewable. The term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Noncancellable. The term "noncancellable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(d) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(e) Notice of nonrenewal shall be given 90 days prior to nonrenewal.

(f) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(g) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(4) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy

remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(8) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(9) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(10) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(11) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(12) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(13) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities, shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(14) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

**R590-126-6. Required Provisions.**

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) All applications shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(f) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Accident Only Policies.

(a) An accident only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(c) An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which

benefits are payable that are lesser than the maximum amount payable under the policy.

(8) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and schedule page.

(9) Disappearance. If a policy or certificate includes a disappearance benefit, payment must be made within the time limits provided by R590-192-9 when proof of loss, satisfactory to the company, is filed and it is reasonable to assume death occurred, but a body cannot be found.

(10) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(11) Specified Disease Insurance Buyers Guide. An insurer, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide filed with the commissioner at the time of enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(12) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(13) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(14) Basic hospital, basic medical-surgical, and basic hospital-medical surgical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(15) Dental and vision coverage policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the



following:

Notice to Buyer: This (policy) (certificate) provides (dental) (vision) coverage only.

**R590-126-7. Accident and Health Standards for Benefits.**

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Section 31A-22-626 and Rule R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness, and shall include at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) \$100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least \$3000; or

(ii) ten times the daily hospital room and board benefits; and

(c) hospital outpatient services consisting of:

(i) hospital services on the day surgery is performed;

(ii) hospital services rendered within 72 hours after injury, in an amount not less than \$250 per accident; and

(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an inpatient of the hospital to an extent not less than \$200;

(d) benefits provided under Subsections (a) and (b) may be provided subject to a combined deductible amount not in excess of \$200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for and shall include at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a current procedure terminology based relative value fee schedule, up to at least \$1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital

for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) \$100 per day.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a policy of accident and health which combines coverage and must meet the requirements of both Subsections R590-126-7(1) and (2).

(4) Hospital Confinement Indemnity Coverage.

(a) Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(b) Coverage includes an indemnity amount of not less than \$50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(c) Benefits shall be paid regardless of other coverage.

(5) Income Replacement Coverage.

Income replacement coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both that:

(a) contains an elimination period no greater than:

(i) 90-days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(b) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;

(c) where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required;

(d) a policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability;

(e) the provisions of this subsection do not apply to policies providing business buyout coverage.

(6) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500.

(7) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than \$1,000 for accidental death, \$1,000 for double dismemberment and \$500 for single dismemberment.

(8) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases, and includes critical illness coverages. Any such policy shall meet

these general provisions. The policy shall also meet the standards set forth in the applicable Subsections R590-126-7(8)(b), (c) or (d).

(a) General Provisions.

(i) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this Subsection (8).

(ii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead.

(iii) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(iv) Renewability. Specified disease coverage shall be at least guaranteed renewable.

(v) Probationary period. No policy issued pursuant to this section may contain a probationary period greater than 30 days.

(vi) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(vii) Medical Care. Payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment.

(viii) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(ix) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(x) Hospice. Hospice care is an optional benefit, but if offered it shall meet the following minimum standards:

(A) eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectancy of six months or less;

(B) fixed-sum payment of at least \$50 per day; and

(C) lifetime maximum benefit of at least \$10,000.

(b) Expense Incurred Benefits. The following benefit standards apply to specified disease coverage on an expense-incurred basis.

(i) Policy limits. A deductible amount not to exceed \$250, an aggregate benefit limit of not less than \$25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment, which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse, or licensed practical nurse;

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof,

including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and ileostomy appliances;

(N) prosthetic devices including wigs and artificial breasts;

(O) nursing home care for non-custodial services; and

(P) reconstructive surgery when deemed necessary by the attending physician.

(c) Per Diem Benefits. The following benefit standards apply to specified disease coverage on a per diem basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least \$200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one-half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) blood and plasma benefit with a fixed-sum benefit of at least \$50 per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least 365 days of treatment.

(ii) Benefits tied to confinement in a skilled nursing home or home health care are optional. If a policy offers these benefits, they must equal the following:

(A) fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(B) fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(C) Any restriction or limitation applied to the benefits may not be more restrictive than those under Medicare.

(d) Lump Sum Benefits. The following benefit standards apply to specified disease coverage on a lump sum basis.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of \$1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(9) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the standards for benefits required under this Section. These policies or contracts may be delivered or issued for delivery with the outline of coverage required by Section R590-126-8.

**R590-126-8. Outline of Coverage Requirements.**

**(1) Basic Hospital Expense Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

**BASIC HOSPITAL EXPENSE COVERAGE**

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

**OUTLINE OF COVERAGE**

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!  
 Basic hospital expense coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses.  
 A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital out-patient services; and other benefits, if any.  
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.  
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

**(2) Basic Medical-Surgical Expense Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

**BASIC MEDICAL-SURGICAL EXPENSE COVERAGE**

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

**OUTLINE OF COVERAGE**

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!  
 Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.  
 A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:  
 surgical services;  
 anesthesia services;  
 in-hospital medical services; and  
 other benefits, if any.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.  
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

**(3) Basic Hospital/Medical-Surgical Expense Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(3). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)

**BASIC HOSPITAL/MEDICAL-SURGICAL EXPENSE COVERAGE**

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

**OUTLINE OF COVERAGE**

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!  
 Basic hospital/medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.  
 A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:  
 daily hospital room and board;  
 miscellaneous hospital services;  
 hospital outpatient services;  
 surgical services;  
 anesthesia services;  
 in-hospital medical services; and  
 other benefits, if any.  
 A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.  
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

**(4) Hospital Confinement Indemnity Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)

**HOSPITAL CONFINEMENT INDEMNITY COVERAGE**

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

**OUTLINE OF COVERAGE**

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!  
 Hospital confinement indemnity coverage is designed to provide, to persons insured, coverage in the form of a fixed daily

benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.

A brief specific description of the benefits in the following order:

daily benefit payable during hospital confinement; and duration of benefit.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

Any benefits provided in addition to the daily hospital benefit.

**(5) Income Replacement Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)

INCOME REPLACEMENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

Income replacement coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

A brief specific description of the benefits contained in the policy.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

**(6) Accident Only Coverage.**

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI

(COMPANY NAME)

ACCIDENT ONLY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

Accident only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

A brief specific description of the benefits.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

**(7) Specified Accident Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII

(COMPANY NAME)

SPECIFIED ACCIDENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

Specified accident coverage is designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

A brief specific description of the benefits, including dollar amounts.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

**(8) Specified Disease Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII

(COMPANY NAME)

SPECIFIED DISEASE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

A brief specific description of the benefits, including dollar amounts.

A description of any policy provisions that exclude, eliminate,

restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.  
 A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

**(9) Limited Benefit Health Coverage.**

Except for dental or vision plans, an outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the standards of Subsections R590-126-7(1) through (8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX

(COMPANY NAME)

LIMITED BENEFIT HEALTH COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage. A brief specific description of the benefits, including amounts.

A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

**(10) Dental Coverage.**

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X

(COMPANY NAME)

DENTAL COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL DENTAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

A brief specific description of the benefits.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

**(11) Vision Coverage.**

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)

VISION COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL VISION EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!

A brief specific description of the benefits.

A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.

A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(12) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to or upon the sale of an individual accident and health insurance policy as required in this rule.

(13) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.

(14) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies, which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(15) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(16) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

**R590-126-9. Replacement of Accident and Health Insurance Requirements.**

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company.

31A-22-626  
31A-23a-402  
31A-26-301

For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:  
.....  
(Date)  
.....  
(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE XIII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy. You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage. (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.  
COMPANY NAME

**R590-126-10. Enforcement Date.**

The commissioner will begin enforcing the revised provision of this rule January 1, 2006.

**R590-126-11. Severability.**

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

**KEY: health insurance**

May 1, 2019 31A-2-201  
Notice of Continuation December 12, 2016 31A-2-202  
31A-21-201  
31A-22-605  
31A-22-623

**R590. Insurance, Administration.****R590-166. Home Protection Service Contract Rule.****R590-166-1. Authority.**

This rule is issued by the Insurance Commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code and under Subsections 31A-6a-110(1) and (2).

**R590-166-2. Purpose and Scope.**

The purpose of this rule is to establish certain exemptions from the requirements of Chapter 6a of Title 31A as it relates to home protection companies as defined herein.

**R590-166-3. Definition.**

A. "Home protection service contract," also referred to as "home service contract" or "home warranty," means a service contract as defined by Subsection 31A-6a-101(4)(a) whereby a person, other than a builder, seller, or lessor of a home which is the subject of the contract, undertakes, for a specified period of time and for a predetermined fee, to repair or replace components, systems, or appliances of such home upon mechanical or operational failure, or to make indemnification to the holder of such contract for such repair or replacement.

B. "Home protection company" means a service contract provider as defined by 31A-6a-101(6) who issues home protection service contracts, excluding insurers authorized for casualty insurance.

**R590-166-4. Rule.**

A. Upon prior written notification to the commissioner, home protection companies doing business in this state who are, at the time of notification, in compliance with all the terms and provisions set forth in this rule and are in compliance with all of the terms and provisions of Chapter 6a of Title 31A, except those terms and provisions specifically exempted herein, shall be exempt from the requirements of Subsections 31A-6a-103(1)(a) and (b), and 31A-6a-103(2)(b)(iv) and the requirements of Subsections 31A-6a-104(1)(a) and (b), and 31A-6a-104(2)(a)(i); provided, however, that nothing herein shall abrogate the requirement that home protection companies file copies of the service contracts to be used in this state, and any modifications thereto as would otherwise be required pursuant to Subsections 31A-6a-103(2)(a) and (b). So long as a home protection company remains in compliance with this rule, the home protection company's election to be subject to this rule shall remain in effect until written notification to the commissioner by the company of the company's withdrawal of its election. Notwithstanding the foregoing, home protection companies who are doing business in this state prior to the effective date of this rule and who elect to be subject to this rule as of the rule's effective date shall have until 60 days from the rule's effective date to attain compliance with all the terms and provisions of the rule.

B. To assure the faithful performance of its obligations to its contract holders the home protection company shall deposit in accordance with Section 31A-2-206 an amount not less than \$10,000 for each 500 home protection service contracts in force in this state, but not to exceed \$100,000. In the event of any failure of the home protection company to perform its obligations to its contract holders, the commissioner may make equitable distributions to contract-holders from funds held on deposit.

C. In lieu of the deposit required in paragraph B above, a surety bond or irrevocable letter of credit in favor of the commissioner for \$50,000 may be filed by the home protection company. When, based on the home protection company's annual report pursuant to Section 5(A) hereof, the number of home protection service contracts issued by a protection company then in force in this state exceeds 2,500, the amount of

the surety bond or letter of credit shall be increased to \$100,000. The bond shall be issued by an insurer authorized to transact surety business in this state. Any letter of credit shall be from a bank approved by the commissioner and in a form acceptable to the commissioner. The surety bond or letter of credit shall be held for the same purpose as the deposit in lieu of which it is filed. No bond or letter of credit shall be cancelled or subject to cancellation unless at least 30 days advance notice, in writing, thereof is filed with the commissioner and evidence of other security is provided.

D. The securities, bond or letter of credit of a home protection company deposited as required by this rule shall constitute a claim fund to be administered by the commissioner for the benefit of persons sustaining actionable injury due to the insolvency or impairment of the home protection company. The commissioner may, at his option, seek assumption of an insolvent home protection company's obligations and business by a solvent company, and apply the insolvent home protection company's deposit or proceeds of any surety bond or letter of credit to this purpose.

E. Any deposit, surety bond or letter of credit shall be maintained unimpaired as long as the home protection company continues to do business in this state. Whenever the home protection company ceases to do business in this state and furnishes the commissioner proof that it has discharged or otherwise adequately provided for all its obligations to its home protection service contract holders in this state, the commissioner shall authorize release of the deposited securities, surety bond or letter of credit on file at that time.

**R590-166-5. Annual Statements, Interim Reports.**

A. A home protection company electing to be subject to this rule shall annually, within 90 days after the close of its fiscal year, file with the commissioner its annual statement in a form prescribed by the commissioner. Such annual statement shall include a current financial statement prepared in accordance with generally accepted accounting principles, reviewed by an independent certified public accountant, and verified by the home protection company's president and principal financial or accounting officer.

B. Each annual statement shall also report the home protection company's volume of business in this state during the preceding fiscal year, the losses thereon, open depositories at year end, and a statement of assets and liabilities.

C. A home protection company which fails to file its annual statement in the form and within the time provided in this rule may be fined \$500 for each month, or any part thereof, during which such delinquency continues, and upon notice by the commissioner, its election to be subject to this rule may be suspended or revoked until such delinquency is cured to the satisfaction of the commissioner.

D. In addition to an annual statement, the commissioner may require of any particular home protection company, in any situation where that home protection company's ability to service its obligations to holders or creditors is in reasonable doubt, such additional regular or special reports as the commissioner may deem necessary.

**R590-166-6. Severability.**

If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.

**KEY: insurance****January 24, 2006****Notice of Continuation April 3, 2019****31A-2-201****31A-6a-110**

**R590. Insurance, Administration.****R590-190. Unfair Property, Liability and Title Claims Settlement Practices Rule.****R590-190-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided in Section 31A-2-202(4).

**R590-190-2. Purpose.**

This rule sets forth minimum standards for the investigation and disposition of property, liability, and title claims arising under contracts or certificates issued to residents of the State of Utah. It is not intended to cover bail bonds. These standards include fair and rapid settlement of claims, protection for claimants under insurance policies from unfair claims adjustment practices and promotion of professional competence of those engaged in claim adjusting. This rule defines procedures and practices which constitute unfair claim practices. This rule is regulatory in nature and is not intended to create any private right of action.

**R590-190-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in 31A-1-301, and the following:

(1) "Claim file" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(3) "Claim representative" means any individual, corporation; association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim, whether or not licensed within the State of Utah to do so.

(4) "Days" means calendar days.

(5) "Documentation" includes, but is not limited to, any pertinent communications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

(6) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to a benefit or a payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(7) "General business practice" means a pattern of conduct.

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(9) "Notice of claim or loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprizes the insurer of the facts pertinent to a claim.

(10) "Proof of loss" shall mean reasonable documentation by the insured in accordance with policy provisions and insurer

practices as to the facts of the loss and the amount of the claim.

(11) "Specific disclosure" shall mean notice to the insured by means of policy provisions in boldface type or a separate written notice mailed or delivered to the insured.

(12) "Third party claimant" means any person asserting a claim against any person under a policy or certificate of an insurer.

**R590-190-4. File and Record Documentation.**

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) the insurer shall maintain claim data that is accessible and retrievable for examination; and

(2) detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to the claim.

**R590-190-5. Misrepresentation of Policy Provisions.**

(1) The insurer and its representatives shall fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented, including loss of use and household services.

(2) The insurer is prohibited from denying a claim based upon a first party claimant's failure to exhibit the property unless there is documentation of a breach of the policy provision in the claim file.

**R590-190-6. Failure to Acknowledge Pertinent Communications.**

Within 15-days every insurer shall:

(1) upon receiving notification of a claim, acknowledge the receipt of such notice unless payment is made within such period of time, or unless the insurer has a reason acceptable to the Insurance Department as to why such acknowledgment cannot be made within the time specified. Notice given to an agent of an insurer is notice to the insurer;

(2) provide a substantive response to a claimant whenever a response has been requested; and

(3) upon receiving notification of a claim, provide all necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

**R590-190-7. Notice of Claim or Loss.**

(1) Notice of Claim or Loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of Claim or Loss may be given by an insured to any appointed agent, authorized adjuster, or other authorized claim representative of an insurer unless the insurer clearly directs otherwise by means of Specific Disclosure as defined herein.

(3) The general practice of the insurer when accepting a notice of loss or notice of claim shall be consistent for all policyholders in accordance with the terms of the policy.

**R590-190-8. Proof of Loss.**

Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule and the requirements of Section 31A-21-312.

**R590-190-9. Unfair Methods, Deceptive Acts and Practices Defined.**

The commissioner, pursuant to Section 31A-26-303(4),



hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;

(2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims;

(4) failing to deliver a copy of the insurer's guidelines, which could include the department's statutes, rules and bulletins, for prompt investigation of claims to the Insurance Department when requested to do so;

(5) refusing to pay claims without conducting a reasonable investigation;

(6) offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources;

(7) making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated;

(8) failing to pay claims within 30-days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) refusing payment of a claim solely on the basis of an insured's request to do so unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or

(b) the insured is granted the right under the policy of insurance to consent to settlement of claims.

(10) advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(11) misleading a claimant as to the applicable statute of limitations;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment;

(13) deducting from a loss or claim payment made under one policy those premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;

(15) issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of the insured;

(17) denying a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage;

(18) refusing to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited

by these rules, in claims settlement or claims payment;

(19) when an automobile insurer represents both a tortfeasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tortfeasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tortfeasor's liability coverage before exhausting a claimant's personal injury protection coverage.

(20) failing to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules. This does not apply to insurers who fail to pay Personal Injury Protection expenses when due. These expenses shall bear interest as provided in 31A-22-309(5)(c).

#### **R590-190-10. Minimum Standards for Prompt, Fair and Equitable Settlements.**

(1) The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

(2) Within 30-days after receipt by the insurer of a properly executed proof of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the acceptance or denial of the claim by the insurer unless the investigation cannot be reasonably completed within that time. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30-days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, within 45-days after sending the initial notification and within every 45-days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or public adjuster. Any basis for the denial of a claim shall be noted in the insurer's claim file and must be communicated promptly and in writing to the first party claimant. Insurers are prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial.

(3) Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30-days after the insurer is furnished written proof of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written proof is not furnished to the insurer as to the entire claim, any partial amount supported by written proof or investigation is overdue if not paid within 30-days. Payments are not deemed overdue when the insurer has reasonable evidence to establish that the insurer is not responsible for the payment, notwithstanding that written proof has been furnished to the insurer.

(4) If negotiations are continuing for settlement of a claim with a claimant, who is not represented by legal counsel or public adjuster, notice of expiration of the statute of limitation or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

(5) Insurers are prohibited from making statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Upon receipt of an inquiry from the insurance department regarding a claim, every licensee shall furnish a substantive response to the insurance department within the time period specified in the inquiry.

**R590-190-11. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance.**

(1) When the insurance policy provides for the adjustments and settlement of automobile total losses for first party claimants on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) the insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file;

(b) the insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by using:

(i) the cost of two or more comparable automobiles in the local market area when a comparable automobile is available or was available within the last 90-days to consumers in the local market area;

(ii) the cost of two or more comparable automobiles in areas proximate to the local market area, including the closest major metropolitan areas within or without the state, that are available or were available within the last 90-days to consumers when comparable automobiles are not available in the local market area pursuant to Subsection R590-190-11.(1)(b)(i);

(iii) one of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area; or

(iv) any source of determining statistically valid fair market values that meet all of the following criteria:

(A) the source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

(B) the source's database shall produce values for at least 85% of the makes and models for the last 15 model years, taking into account the values of all major options for such vehicles; and

(C) the source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters, such as time and area, to assure statistical validity.

(v) if the insurer is notified within 30-days of the receipt of the claim draft that the first party claimant cannot purchase a comparable vehicle for such market value, the company shall reopen its claim file and the following procedure(s) shall apply:

(A) the company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers or private sellers;

(B) the company shall either pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

(C) the company may elect to offer a replacement in accordance with the provisions set forth in Subsection R590-190-11.(1)(a); or

(D) the company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of the loss. The company is not

required to take action under this subsection if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could be purchased for the market value determined by the company before applicable deductions.

(c) when a first party claimant automobile total loss is settled on a basis which deviates from the methods described in Subsections R590-190-11.(1)(a) and (b), the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deductions for salvage, must be measurable, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(2) Total loss settlements with a third party claimant shall be on the basis of the market value or actual cost of a comparable automobile at the time of loss. Settlement procedures shall be in accordance with Subsection R590-190-11.(1)(b) and (c), except (b)(v) shall not apply.

(3) Where liability and damages are reasonably clear, insurers are prohibited from recommending that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(4) Insurers are prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(5) Insurers shall include the first party claimant's deductible, if any, in subrogation demands initiated by the insurer. Subrogation recoveries may be shared on a proportionate basis with the first party claimant when an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered. The recovery shall be applied first to reimburse the first party claimant for the amount or share of the deductible when the full amount or share of the deductible has been recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. If subrogation is initiated but discontinued, the insured shall be advised.

(6) If an insurer prepares or approves an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. If the insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions. The insurer shall provide a written explanation of these deductions to the claimant upon request.

(8) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(9) Where coverage exists, loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, unless the claimant has physical damage coverage available, during the

period the automobile is necessarily withdrawn from service to obtain parts or effect repair, or, in the event the automobile is a total loss and the claim has been timely made, during the period from the date of loss until a reasonable settlement offer has been made by the insurer. The insurer is prohibited from refusing to pay for loss of use for the period that the insurer is examining the claim or making other determinations as to the payability of the loss, unless such delay reveals that the insurer is not liable to pay the claim. Loss of use payments shall be an amount in addition to the payment for the value of the automobile.

(10) Subject to Subsections R590-190-11.(1) and (2), an insurer shall fairly, equitably and in good faith attempt to compensate a claimant for all losses incurred under collision or comprehensive coverages. Such compensation shall be based at least, but not exclusively, upon the following standards:

(a) an offer of settlement may not be made exclusively on the basis of useful life of the part or vehicle damaged;

(b) an estimate of the amount of compensation for the claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value, which shall take into account the cost of replacement of the vehicle and/or the part for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be taken into account in establishing the amount of compensation of a claim; and

(e) actual cash value, which shall include taxes and other fees which shall be incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) Insurers are prohibited from demanding reimbursement of personal injury protection payments from a first-party insured of payments received by that party from a settlement or judgement against a third party, except as provided by law.

(12) The insurer shall provide reasonable written notice to a claimant prior to termination of payment for automobile storage charges and documentation of the denial as required by Section R590-190-4. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment.

#### **R590-190-12. Unfair Claims Settlement Practices Applicable to Automobile Insurance.**

The commissioner, pursuant to Section 31A-26-303(4), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

(1) using as a basis for cash settlement with a claimant an amount which is less than the amount which the insurer would be charged if repairs were made, unless such amount is agreed to by the claimant or provided for by the insurance policy;

(2) refusing to settle a claim based solely upon the issuance of, or failure to, issue a traffic citation by a police agency;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing in good faith to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service in order to perfect a claim;

(6) failing to furnish the claimant, when requested, with the name and address of the salvage dealer who has provided a salvage quote for the amount deducted by the insurer in a total loss settlement;

(7) refusing to disclose policy limits when requested to do so by a claimant or claimant's attorney;

(8) using a release on the back of a check or draft which requires a claimant to release the company from obligation on

further claims in order to process a current claim when the company knows or reasonably should know that there will be future liability on the part of the insurer;

(9) refusing to use a separate release of a claim document rather than one on the back of a check or draft when requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth, a practice referred to as "low-balling;";

(11) refusing to offer to pay claims based upon the Doctrine of Comparative Negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

#### **R590-190-13. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.**

(1) Replacement Cost Value:

When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) when a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacements not otherwise excluded by the policy, shall be included in the loss. The insured is only responsible for the applicable deductible; and

(b) when a loss requires replacement or repair of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured is only responsible for the applicable deductible.

(2) Actual Cash Value:

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of relevant documentation from the claim file detailing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value, as set forth above, is not required. In such cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

#### **R590-190-14. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance law**

**July 28, 1999**

**Notice of Continuation April 3, 2019**

**31A-2-201**

**31A-26-301**

**31A-26-303**

**31A-21-312**

**31A-2-308**

**R590. Insurance, Administration.****R590-191. Unfair Life Insurance Claims Settlement Practices Rule.****R590-191-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided by Section 31A-2-202(4). Authority to require payment of interest on death proceeds is provided in Section 31A-22-428.

**R590-191-2. Purpose.**

This rule sets forth minimum standards for the investigation and disposition of life insurance claims arising under policies or certificates issued to residents of the State of Utah. These standards include fair and rapid settlement of claims, protecting claimants under insurance policies from unfair claims settlement practices and promoting the professional competence of those engaged in processing claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim settlement practices. This rule is regulatory in nature and is not intended to create a private right of action.

**R590-191-3. Definitions.**

For the purpose of this rule the Commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

- (1) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.
- (2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.
- (3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.
- (4) "Claimant" means a person making a claim under a policy, including an insured, policyholder, beneficiary, or the claimant's legal representative, including a member of the claimant's immediate family.
- (5) "Days" means calendar days.
- (6) "Documentation" includes, but is not limited to, all written and electronic communication records, transactions, notes, work papers, claim forms, and explanation of benefits forms relative to the claim.
- (7) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
- (8) "Notice of Loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy to an insurer or its representative, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
- (9) "Proof of Loss" means written proofs, such as claim forms, medical authorizations or other reasonable evidence of the claim that is ordinarily required of all claimants submitting claims.

**R590-191-4. Minimum Standards for Prompt, Fair and Equitable Claim Handling Processes and Communications.**

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy,

subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise in accordance with policy provisions or in a separate written notice mailed or delivered to the claimant.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by an authorized representative of the insurer.

(4) Insurance policies may not require notice of loss to be given in a manner which is inconsistent with the actual practice of the insurer. For example, if the practice of the insurer is to accept notice of loss by telephone, the policy shall reflect that practice, and not require that the claimant furnish "immediate written notice" of loss.

(5) Within 15 days of receipt of notice of loss from a claimant, the insurer shall provide necessary claim forms, instructions, and reasonable assistance so the claimant can properly comply with company requirements for filing a claim.

(6) Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312. Proof of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

(7) Within 15 days of receipt of proof of loss from a claimant, the insurer shall:

(a) provide written acknowledgment of the receipt of the proof of loss;

(b) request any necessary additional information from claimant; and

(c) commence any necessary investigation of the claim, including requesting additional information from other parties having documentation or information relating to the claim; or

(d) provide the claim settlement and a written explanation of benefits to the claimant if no additional information or investigation is necessary.

(8) Within 15 days of receipt of any communications relating to a claim which reasonably suggests that a response is expected, the insurer shall substantively respond to such communication.

(9) Within 30 days of receipt of proof of loss from the claimant, the insurer shall complete the investigation of a claim, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 30 days of its receipt of proof of loss. If the investigation cannot be completed within 30 days, the insurer shall communicate to the claimant a written explanation as to the reasons for the delay and shall continue to so communicate at least every 30 days until the claim is either settled or denied.

(10) Within 15 days of completion of the investigation, the insurer shall either:

(a) provide the claim settlement and a written explanation of benefits to the claimant; or

(b) provide, in writing, a denial of the claim and an explanation to the claimant as to the reasons for the denial.

(11) Closing a claim file without settlement is considered a denial and must be so communicated in writing to the claimant and according to the provisions of the policy.

(12) If recalculation/revisitation of a claim becomes necessary subsequent to either denial or settlement, the insurer shall again comply with the initial claim handling process requirements as described in this section.

(13) Upon receipt of an inquiry from the Insurance Department regarding a claim, every licensee shall furnish a substantive response to the Insurance Department within the time period specified in the inquiry.

**R590-191-5. Unfair Claims Settlement Practices.**

The commissioner, pursuant to 31A-26-303(4), hereby finds the following acts or failure to perform required acts to be misleading, deceptive, unfairly discriminatory, or overreaching in the settlement of claims:

- (1) concealing from or failing to fully disclose to a claimant any benefits, limitations, exclusions, coverages, or other relevant provisions of an insurance policy or insurance contract under which a claim is presented;
- (2) denying or threatening the denial of a claim for any reason which is not clearly described in the policy;
- (3) refusing to settle claims without conducting a reasonable and complete investigation;
- (4) refusing to provide a written basis for the denial of a claim upon demand of the claimant;
- (5) failing to provide the claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;
- (6) compensating employees, agents or contractors of any amounts which are based on savings to the insurer as a result of reducing or denying claims;
- (7) making a claim settlement to the claimant not accompanied by a statement or explanation of benefits setting forth the coverage under which the settlement is being made and how the settlement amount was calculated;
- (8) failing to settle a claim following receipt of proof of loss when liability is reasonably clear in order to influence other claim settlements under other portions of the insurance policy coverage or under other policies of insurance;
- (9) advising a claimant not to obtain the services of an attorney or other advocate or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;
- (10) misleading a claimant as to the applicable statute of limitations;
- (11) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer from total liability;
- (12)(a) for policies issued prior to May 5, 2008, failing to pay interest at the legal rate, as provided in Title 15 of the Utah Code upon amounts that are overdue under these rules. A claim shall be considered overdue if not settled within 15 days of completion of the investigation; or
- (b) for policies issued on or after May 5, 2008, failing to pay interest in accordance with Section 31A-22-428; and
- (13) failing to deliver a copy of the insurer's guidelines for prompt investigation of claims to the Insurance Department when requested to do so.

**R590-191-6. File and Record Documentation.**

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

- (1) The insurer shall maintain accessible and retrievable claim file data for examination. The insurer shall be able to provide the policy number, certificate number if any, duplicate of the policy as issued, date of loss, date notice of loss was received, date proof of loss was received, date any investigation commenced, date the investigation was completed, date of settlement or denial of the claim or date the claim was closed without settlement, documentation as to how the claim was settled and how any payments were calculated, and any other documentation relied upon for claim settlement by the insurer. This data shall be available for all open and closed files for at least the most recent three year period, or, for a Utah domiciled

insurer, since the date of the previous examination by the department, whichever is longer.

- (2) Detailed documentation shall be contained in each claim file in order to permit reconstruction of the insurer's activities relative to each claim.

- (3) Each document within the claim file shall be noted as to date received, date processed or date mailed.

- (4) The claim file records must be maintained either in hard copy files, or some other format that has the capability of duplication to hard copy.

**R590-191-7. Penalties.**

A person found, after an administrative proceeding, to be in violation of this rule, shall be subject to penalties as provided under Section 31A-2-308.

**R590-191-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule immediately upon the effective date.

**R590-191-9. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance law**

**May 29, 2008**

**Notice of Continuation April 3, 2019**

- 31A-2-201**
- 31A-2-204**
- 31A-2-308**
- 31A-21-312**
- 31A-22-428**
- 31A-26-301**
- 31A-26-303**

**R590. Insurance, Administration.****R590-280. Counting Short-Term Funds.****R590-280-1. Authority.**

This rule is adopted pursuant to Section 31A-2-201(3), which authorizes the commissioner to make rules that implement the provisions of Title 31A, and Section 31A-18-105(16), which states that the commissioner may authorize investments for risk-based capital determinations.

**R590-280-2. Scope.**

This rule applies to an insurer subject to Title 31A, Chapter 17, Part 6.

**R590-280-3. Purpose.**

The purpose of this rule is to state the requirements that an insurer must satisfy to count short-term funds as defined in this rule.

**R590-280-4. Definitions.**

(1) "SBA" means the United States Small Business Administration.

(2) "Short-term funds" means a sum of money that an insurer loans to an SBA borrower to fund the SBA borrower's anticipated use of SBA 504 loan proceeds where the insurer's loan is secured by a lien on real property or by any other form of collateral authorized by the commissioner.

**R590-280-5. Requirements for Counting Short-Term Funds.**

An insurer may count short-term funds for the purposes specified under Title 31A, Chapter 17, Part 6, only if:

(1) the total amount of short-term funds at any point in time does not exceed the following as set forth in the insurer's annual or quarterly statutory financial statement, whichever was last filed with the National Association of Insurance Commissioners:

(a) 1.5% of the insurer's total assets as determined according to Subsection 31A-18-106(4); and

(b) 15% of the insurer's capital and surplus;

(2) the duration of each loan does not exceed 150 days;

(3) the insurer provides on request satisfactory proof of compliance with this rule;

(4) the filing of the insurer's most recent RBC report did not qualify as an action level event or as a control level event under Title 31A, Chapter 17, Part 6; and

(5) at the time of the insurer's loan to the SBA borrower, the insurer is not subject to administrative action under Title 31A, Chapter 27, Part 5.

**R590-280-6. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule on the rule's effective date.

**R590-280-7. Severability.**

If any provision of this rule or its application to any persons or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

**KEY: insurance**

**April 23, 2019**

**31A-18-105(16)**

**31A-2-201(3)**

**R628. Money Management Council, Administration.**  
**R628-19. Requirements for the Use of Investment Advisers by Public Treasurers.**

**R628-19-1. Authority.**

This rule is issued pursuant to Section 51-7-18(2)(b).

**R628-19-2. Scope.**

This rule establishes basic requirements for public treasurers when using investment advisers.

**R628-19-3. Purpose.**

The purpose of this rule is to outline requirements for public treasurers who are considering utilizing investment advisers to invest public funds.

**R628-19-4. Definitions.**

(1) The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

- (a) "Certified investment adviser";
- (b) "Council";
- (c) "Director"; and
- (d) "Investment adviser representative".

(2) For purposes of this rule:

(a) "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

**R628-19-5. General Rule.**

1. A public treasurer may use an investment adviser to conduct investment transactions on behalf of the public treasurer as permitted by statute, rules of the Council, and local ordinance or policy.

2. A public treasurer using an investment adviser to conduct investment transactions on behalf of the public treasurer is responsible for full compliance with the Act and rules of the Council.

3. Due diligence in the selection of an investment adviser and in monitoring compliance with the Act and Rules of the Council and the performance of investment advisers is the responsibility of the public treasurer. (The Council advises public treasurers that reliance on certification by the Director may not be sufficient to fully satisfy prudent and reasonable due diligence.)

4. The public treasurer shall assure compliance with the following minimum standards:

(a) A public treasurer may use a Certified investment adviser properly designated pursuant to R628-15.

(b) A public treasurer's use of a Certified investment adviser shall be governed by a written investment advisory services agreement between the public treasurer and the Certified investment adviser. Terms of the agreement shall conform to the requirements of R628-15, and shall be adopted pursuant to all procurement requirements of statute and local ordinance or policy.

(c) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish, the SEC Form ADV Part II for review and consideration by the public treasurer.

(d) All investment transactions and activities of the public treasurer and the Certified investment adviser must be in full compliance with all aspects of the Money Management Act and Rules of the Council particularly those requirements governing criteria for investments, safekeeping, and purchasing only the types of securities listed in 51-7-11., 51-7-12. and 51-7-13. as applicable.

(e) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public

treasurer shall request and the investment adviser shall furnish a clear and concise explanation of the investment adviser's program, objectives, management approach and strategies used to add value to the portfolio and return, including the methods and securities to be employed.

5. If selection of a Certified investment adviser to provide investment advisory services to a public treasurer is based upon the investment adviser's representation of special skills or expertise, the investment advisory services agreement shall require the Certified investment adviser to act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

6. The public treasurer is advised to review and consider standards of practice recommended by other sources, such as the Government Finance Officers Association, in the selection and management of investment adviser services.

**R628-19-6. Reporting to the Council.**

When a public treasurer has contracted with an investment adviser for the management of public funds, the public treasurer shall provide the detail of those investments to the Council, pursuant to Section 51-7-18.2.

**KEY: securities, investment advisers, public funds**

**May 5, 2005**

**51-7-18(2)(b)**

**Notice of Continuation April 12, 2019**

**61-1-13**

**R628. Money Management Council.****R628-20. Foreign Deposits for Higher Education Institutions.****R628-20-1. Purpose.**

To provide guidelines to higher education institutions when depositing funds in foreign countries.

**R628-20-2. Authority.**

This rule is issued pursuant to Section 51-7-17(4)(a) and Section 53B-7-601.

**R628-20-3. Scope.**

This rule relates to funds of higher education institutions that are either required by law of a foreign country to be deposited in the foreign country or are required by the terms of a grant, gift, or contract to be deposited in the foreign country.

**R628-20-4. Definitions.**

(1) The following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (a) "Council";
- (b) "Nationally Recognized Statistical Rating Organization" or "NRSRO".

(2) For purposes of this rule "FDI" means foreign depository institution as defined in Section 7-1-103 of the Utah Code.

**R628-20-5. Requirements for Deposits.**

(1) To be qualified for deposit under Section 53B-7-60 the FDI shall:

- (a) be insured or otherwise have a similar protection if that country does not technically provide insurance;
- (b) be rated "A" or better by one NRSRO; and
- (c) be domiciled in a country in which the sovereign debt rating is "A" or better by the NRSRO.

**R628-20-6. Prohibited Deposits.**

(1) Use of FDIs in any country or territory described below is prohibited.

- (a) Countries subject to sanctions by the Office of Foreign Assets Control (OFAC); and
- (b) Countries and territories on the Financial Action Task Force's (FATF) list of high risk and non-cooperative jurisdictions.

(2) Financial Crimes Enforcement Network (FinCEN) advisories must be reviewed by the higher education institution to ensure that potential anti-money laundering and counter-terrorist financing risks associated with any country are assessed, identified and avoided before establishing deposits in the FDI.

(3) The FDI may not be listed on the U.S. Treasury's Specially Designated Nationals (SDN) list.

**R628-20-7. Approval by the Council.**

(1) The Council must approve the FDI.

(2) Prior to approval by the Council, the higher education institution must present to the Council the reasoning and purpose for the use of a FDI.

(3) Upon review of such reasoning and purpose, the Council will decide whether to give final approval to allow funds to be deposited in the FDI.

(4) The Council may approve an FDI that does not otherwise fall within the requirement of R628-20-5. when other facts make it reasonably prudent to do so.

(5) In approving an FDI, the Council may place restrictions on the use of the FDI when the Council determines it would be reasonably prudent to do so.

- (a) It is the responsibility of the higher education

institution to monitor any restriction placed on the FDI and if violated, to notify the Council of the issue within 30 days of the violation and provide a plan of action in regards to the violation.

**R628-20-8. Reporting by Higher Education Institutions of Foreign Deposits.**

(1) The higher education institution shall file a written report with the Council on or before July 31 and January 31 of each year containing the following information for deposits held on June 30 and December 31 respectively:

- (a) Total market value of the deposit account which will include previous historical ending balances (up to 3 years);
- (b) Total market value of uninsured deposits in the deposit account, which will include previous historical ending balances (up to 3 years);
- (c) Debt rating of the FDI; and
- (d) Debt rating of the country in which the FDI is located.

**KEY: foreign deposits, higher education, public funds**

**February 18, 2014**

**Notice of Continuation April 12, 2019**

**51-7-4(1)(b)(iii)**

**51-7-17(4)(a)**

**53B-7-601**



**R628. Money Management Council, Administration.****R628-21. Conditions and Procedures for the Use of Reciprocal Deposits.****R628-21-1. Authority.**

This rule is issued pursuant to Section 51-7-17(4)(b) and 51-7-18(2)(b).

**R628-21-2. Scope.**

This rule applies to all public treasurers who purchase reciprocal deposits and to all qualified depositories providing reciprocal deposits.

**R628-21-3. Purpose.**

The purpose of this rule is to establish requirements for the investing of public funds in reciprocal deposits.

**R628-21-4. Definitions.**

For purposes of this rule the following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (1) Council;
- (2) Commissioner;
- (3) Public funds;
- (4) Public treasurer;
- (5) Qualified depository, and;
- (6) Reciprocal deposits.

**R628-21-5. General Rule.**

(1) A public treasurer may invest public funds in reciprocal deposits only through qualified depositories that use a deposit account registry service. The public funds placed with a qualified depository into reciprocal deposits does not apply towards the maximum public funds allotment for that qualified depository as described in R628-11.

(2) Reciprocal deposits may only be initiated by qualified depository institutions and then re-deposited through a deposit account registry service as follows:

(a) in one or more FDIC insured depository institutions in amounts up to the relevant FDIC-insured deposit limit for a depositor in each depository institution; and

(b) in exchange for reciprocal FDIC-insured deposits made through the deposit account registry service to the qualified depository.

**R628-21-6. Insurance Requirements for a Deposit Account Registry Service.**

A deposit account registry service shall provide the public entity with proof of errors and omissions coverage equal to five percent of Utah public funds under management but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

**R628-21-7. Reporting Requirements.**

(1) A public entity shall file a written report with the Council of reciprocal deposits on or before July 31 and January 31 of each year for deposits held on June 30 and December 31 respectively.

(2) Within 10 days of the end of each month, each qualified depository institution holding reciprocal deposits on behalf of public treasurers shall file a report with the Commissioner of the total month-end amount of Utah public funds in reciprocal deposits initially deposited into the qualified depository institution and currently re-deposited in one or more FDIC insured depository institutions.

**KEY: public funds, qualified depository, reciprocal deposits**  
**April 15, 2014** 51-7-17(4)(b)  
**Notice of Continuation April 12, 2019** 51-7-18(2)(b)

**R657. Natural Resources, Wildlife Resources.****R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt,

including conservation permits, expo permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

**R657-62-3. Scope of Rule.**

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;

(b) limited-entry deer;

(c) limited-entry elk;

(d) limited-entry pronghorn;

(e) once-in-a-lifetime;

(f) public cooperative wildlife management unit;

(g) general season deer and youth elk;

(h) limited entry bear;

(i) bear pursuit;

(j) antlerless big game;

(k) sandhill crane;

(l) sharp-tail and greater sage grouse;

(m) swan

(n) cougar;

(o) sportsman; and

(p) turkey.

**R657-62-4. Residency Restrictions.**

(1) Only a resident may apply for or obtain a resident permit or resident certificate of registration and only a nonresident may apply for or obtain a nonresident permit or nonresident certificate of registration.

(2)(a) To apply for a resident permit or certificate of registration, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit or certificate of registration issued through a drawing.

**R657-62-5. Hunting on Private Lands.**

(1) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

**R657-62-6. Applications.**

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

**R657-62-7. Group Applications.**

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

**R657-62-8. Bonus Points.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative

wildlife management units;

- (v) limited entry bear;
- (vi) restricted bear pursuit;
- (vii) antlerless moose;
- (viii) ewe Rocky Mountain bighorn sheep;
- (xi) ewe desert bighorn sheep;
- (x) cougar; and
- (xi) turkey.

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-9. Preference Points.**

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

- (i) each valid, unsuccessful application applying for a

general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or

(ii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) Greater sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points for the applicable species are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit through the drawing.

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-10. Dedicated Hunter Preference Points.**

(1) Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A preference point is awarded for:

- (a) each valid unsuccessful application;
- (b) each valid application when applying only for a preference point in the dedicated hunter drawing.

(3)(a) A person may not apply in the drawing for both a preference point and a certificate of registration.

(b) A person may not apply for a preference point if that person is ineligible to apply for a certificate of registration.

(4) Preference points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the Dedicated Hunter drawing.

(6) Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2011 to the current applicable drawing for the

purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud, deceit or misrepresentation.

**R657-62-11. Corrections, Withdrawals and Resubmitting Applications.**

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

**R657-62-12. Drawing Results.**

Drawing results will be made available by the date prescribed in the respective guidebook of the Wildlife Board.

**R657-62-13. License, Permit, Certificate of Registration and Handling Fees.**

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

**R657-62-14. Permits Remaining After the Drawing.**

(1) Any permits remaining after the drawing are available on the date published in the respective guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

**R657-62-15. Waiting Periods for Permits Obtained After the Drawing.**

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

**R657-62-16. Dedicated Hunter Certificates of Registration.**

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

**R657-62-17. Lifetime License Permits.**

(1) Lifetime License permits shall be issued pursuant to rule R657-17.

**R657-62-18. Big Game.**

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(c) Youth applicants who apply for a management buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.

(iii) Bonus points shall be used when applying

(iv) Any reserved permits remaining and any youth

applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(3) Senior

(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(b) Senior applicants who apply for a management buck deer permit

(i) will automatically be considered in the senior drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.

(iii) Bonus points shall be used when applying.

(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(4) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) general buck deer -- lifetime license;

(vi) general buck deer -- dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(5) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(6) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, premium limited entry, management, or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit, limited entry, premium limited entry, or landowner buck deer permits obtained through the landowner; or

(C) buck deer wildlife expo permits, as provided in R657-55-6.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner; or

(C) bull elk wildlife expo permits, as provided in R657-55-6.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner; or

(C) buck pronghorn wildlife expo permits, as provided in R657-55-6.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) Except as provided in Subsection (iii), once-in-a-lifetime restrictions do not apply to obtaining wildlife expo permits for once-in-a-lifetime species in the wildlife expo drawing, as provided in R657-55.

(iii) Any person who obtains a wildlife expo permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in R657-62 and the guide books of the Wildlife Board for taking big game.

(iv) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

**R657-62-19. Black Bear.**

(1) Permit and Pursuit Applications.

(a) For the purposes of this section, "restricted bear pursuit permit" means a limited entry permit issued in a division drawing that authorizes an individual to pursue bear using

trained dogs, consistent with the restrictions found in Utah Admin. Code R657-33.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or restricted bear pursuit permit.

(c) A person may not apply for or obtain more than one bear permit and restricted bear pursuit permit distributed pursuant to this rule within the same calendar year.

(d) A person may simultaneously possess both a limited entry bear permit and a restricted pursuit permit.

(e) Limited entry bear permits and restricted pursuit permits are valid only for the hunt unit and for the specified season designated on the permit.

(f)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear or restricted bear pursuit permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application a specific season for their limited entry or restricted bear pursuit permit.

(g) Any person intending to use bait during their bear hunt must obtain a certificate of registration as provided in Sections R657-33-13 and 14.

(h) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who obtains a limited entry bear permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(b) Any person who obtains a limited entry restricted bear pursuit permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(c) Waiting periods do not apply to bear wildlife expo permits, as provided in R657-55-6.

(4) A person must complete a mandatory orientation course prior to applying for any bear permit offered through a division drawing or obtaining bear permits as described in R657-33-3(5).

#### **R657-62-20. Antlerless Species.**

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn;

(iv) antlerless moose, if available;

(v) ewe Rocky Mountain bighorn sheep, if available; and

(vi) ewe desert bighorn sheep, if available.

(d)(i) Any person who has obtained a buck pronghorn permit, bull moose permit, ram Rocky Mountain bighorn sheep permit, or a ram desert bighorn sheep permit may not apply in the same year for a doe pronghorn permit, antlerless moose permit, ewe Rocky Mountain bighorn sheep permit, or a ewe desert bighorn sheep permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(ii) A resident may apply for an antlerless moose, ewe Rocky Mountain bighorn sheep, or ewe desert bighorn sheep in the antlerless drawing, but may not apply for more than one of those permits in a given year.

(iii) A nonresident may apply for all antlerless species in a given year.

(e) Applicants may select up to five hunt choices when

applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Applicants may select up to two hunt choices when applying for ewe bighorn sheep permits.

(h) Hunt unit choices must be listed in order of preference.

(i) A person may not submit more than one application in the antlerless drawing per species. (2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose or ewe bighorn sheep permits.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to:

(A) cooperative wildlife management unit antlerless moose permits obtained through the landowner; or

(B) antlerless moose wildlife expo permits, as provided in R657-55-6.

(b) Ewe bighorn sheep waiting period.

(i) Any person who draws or obtains a ewe bighorn sheep permit through the antlerless drawing process may not apply for or receive a permit for the same species of ewe bighorn sheep for a period of five seasons.

(ii) A waiting period does not apply to ewe bighorn sheep wildlife expo permits, as provided in R657-55-6.

#### **R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage Grouse.**

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain Sandhill Crane, Sharp-Tailed and Greater Sage Grouse permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person

17 years of age or younger on July 31 for the purpose of obtaining Sandhill Crane, Sharp-tailed grouse and Greater Sage grouse permits.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group Applications

(a) Up to four people may apply together.

(b) Up to four youth may apply together in a Group Application.

(4) Waiting Periods do not apply.

#### **R657-62-22. Swan.**

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a Swan permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6 (3) (b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31<sup>st</sup> of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a swan permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Up to four youth may apply together in a Group Application.

(4) Waiting period does not apply.

#### **R657-62-23. Cougar.**

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the guidebook of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident

and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of:

(i) purchasing cougar harvest objective permits; or

(ii) obtaining a cougar wildlife expo permit, as provided in R657-55-6.

#### **R657-62-24. Sportsman.**

(1) Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

(i) desert bighorn (ram);

(ii) bison (hunter's choice);

(iii) buck deer;

(iv) bull elk;

(v) Rocky Mountain bighorn (ram);

(vi) mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to rule R657-41.

(b) Once-in-lifetime waiting periods

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

#### **R657-62-25. Turkey.**

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) Permit possession limitations are identified in R657-54. A person may obtain only one spring season and up to three fall season wild turkey permits, subject to the exceptions identified in R657-54.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one wild turkey within the area, sex and season specified on the permit.

(2) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Up to four youth may apply together in a Group Application.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits and fall general season permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 17 years of age or younger on July 31.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(e) Youth who are successful in obtaining a limited entry turkey permit but unsuccessful in harvesting a bird during the limited entry hunt season, may use the limited entry turkey permit to participate in the youth 3-day turkey hunt and the spring general season turkey hunt provided no more than one bird is harvested.

**KEY: wildlife, permits**

**August 9, 2018**

**Notice of Continuation April 9, 2019**

**23-14-18**

**23-14-19**



**R710. Public Safety, Fire Marshal.****R710-12. Hazardous Materials Training and Certification.****R710-12-1. Purpose.**

The purpose of this rule is to establish minimum rules establishing ongoing training standards for hazardous materials emergency response agencies. The Board also adopts minimum rules for certification for persons who provide hazardous materials emergency response services.

**R710-12-2. Authority.**

This rule is authorized by Section 53-7-204.

**R710-12-3. Adoption.**

There is adopted as part of these rules the National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2013 edition, and (NFPA) Standard 1072, 2017 edition, except as amended by provisions as outlined in this rule.

**R710-12-4. Definitions.**

- (1) "AHJ" means Authority Having Jurisdiction.
- (2) "Board" means Utah Fire Prevention Board.
- (3) "Certificate" means a written document issued by the Utah Fire Service Certification Council, or the Utah State Fire Marshal's office.
- (4) "Council" means Hazardous Materials Advisory Council.
- (5) "Emergency response agencies" means those agencies that are created and under the control of local, state or federal government or regional inter-governmental agencies to provide emergency response for hazardous materials.
- (6) "Hazardous Material" means a substance that is solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes, but is not limited to, weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.
- (7) "Emergency Response Services" means providing or coordinating on-site defensive or offensive actions to reduce the risk of harm to people, the environment and property during the emergency phase of a hazardous materials incident.
- (8) "NFPA" means National Fire Protection Association.
- (9) "SFM" means State Fire Marshal or authorized deputy.
- (10) "Utah Fire Service Certification System" means the system approved by the Board to provide certification to those emergency personnel certifying in hazardous materials.

**R710-12-5. Hazardous Materials Advisory Council.**

(1) There is created by the board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the board in matters relating to training and certification standards for hazardous materials emergency responders and emergency response agencies.

(2) The council's members shall be appointed by the board, shall serve four year terms, and shall consist of the following members:

- (a) a representative from the career fire service;
- (b) a representative from the volunteer fire service;
- (c) a representative from the Department of Environmental Quality;
- (d) a representative from the Department of Transportation;
- (e) a representative from law enforcement;
- (f) a representative from the Fire and Rescue Academy;
- (g) a representative from the State Fire Marshal office;
- (h) a representative from the National Guard;
- (i) a representative from a Local Emergency Planning Committee; and
- (j) a representative from private industry.

(3) The council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

(4) The council shall select one of its members to act in the position of chair, and another member to act as vice chair.

(a) The chair and vice chair shall serve one year terms on a calendar year basis.

(b) Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year.

(c) If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

(5) If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the board. The coordinator shall submit the name of the member to the board for status review.

(6) A member of the council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the coordinator prior to the meeting.

(7) The chair or vice chair of the council shall report to the board the activities of the council at regularly scheduled board meetings. The coordinator may report to the board the activities of the council in the absence of the chair or vice chair.

(8) The council shall consider all subjects presented to them, subjects assigned to them by the board, and shall report their recommendations to the board at regularly scheduled board meetings.

(9) One-half of the members of the council shall be reappointed or replaced by the board every two years.

**R710-12-6. Training.**

(1) Instruction materials designed for statewide use that will teach minimum core competencies for those persons certifying to provide response services regarding hazardous material emergencies shall be approved by the council and accepted by the Utah Fire Service Certification Council.

(2) Written examinations, practical or actual demonstrations, and any other required testing given for core competency, for those persons certifying to provide response services regarding hazardous material emergencies statewide, shall be approved by the council and accepted by the Utah Fire Service Certification Council.

**R710-12-7. Certificates.**

(1) To be certified in hazardous material response, a request for certification shall be made in writing to the Utah Fire Service Certification System, or the Utah State Fire Marshal's Haz-Mat Section.

(a) The applicant shall indicate which of the five certification levels the applicant will apply for:

- (i) Awareness Level;
  - (ii) Operations Level Responder;
  - (iii) Hazardous Materials Technician;
  - (iv) Hazardous Materials Officer; or
  - (v) Hazardous Materials Incident Commander.
- (2) Examination.

(a) An applicant certifying at the Awareness Level shall be trained to meet all the competencies in Chapter 4 of NFPA 472 and pass a written examination with a minimum score of 70%.

(b) An applicant certifying as an Operations Level Responder shall meet all the requirements listed in Subsection R710-12-7(3)(a), and shall be trained to meet all the competencies in Chapter 5 of NFPA 472, and pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(c) An applicant certifying as a Hazardous Materials

Technician shall pass all the requirements listed in Subsections R710-12-7(3)(a) and R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 7 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(d) An applicant certifying as a Hazardous Materials Officer shall meet all the requirements listed in Subsections R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 10 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(e) An applicant certifying as a Hazardous Materials Incident Commander shall meet all the requirements listed in Subsections R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 8 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(3) Following receipt of the properly completed application and compliance with Subsection R710-12-7(3), the Utah Fire Service Certification Council, or the Utah State Fire Marshal's Haz-Mat Section shall issue a certificate.

(4) Original certificates shall be valid for three years from the date of certification issuance. Thereafter, each certificate of registration shall be renewed every three years from issuance, unless otherwise specified by a Utah certification standard.

(5) Renewal shall be made as directed by the Utah Fire Service Certification Council.

(6) Every holder of a valid certificate shall provide to the certifying entity written verification from the authorizing agency that they have received continuing training in hazardous materials necessary to maintain competency over the previous three-year period of certification issuance.

#### **R710-12-8. Adjudicative Proceedings.**

All adjudicative proceedings performed with regard to a certificate issued under Section R710-12-7 shall proceed as outlined in the Utah Fire Service Certification System, Policy and Procedures Manual.

#### **R710-12-9. Fees.**

The required fee for certification and recertification shall be paid to the Utah Fire Service Certification System.

**KEY: hazardous materials**  
**April 9, 2019**

**53-7-204**

**R746. Public Service Commission, Administration.****R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).****R746-8-100. Authority, Purpose, and Organization.**

- (1) This rule is adopted under:
  - (a) Utah Code Section 54-8b-10; and
  - (b) Utah Code Section 54-8b-15.
- (2) This rule:
  - (a) governs the methods, practices, and procedures by which:
    - (b) the UUSF is created, maintained, and funded; and
    - (c) funds are disbursed from the UUSF to qualifying access line providers.
  - (3) This rule is organized into the following Parts:
    - (a) Part 100: Authority, Purpose and Organization;
    - (b) Part 200: Definitions;
    - (c) Part 300: UUSF Funding; and
    - (d) Part 400: UUSF Distributions.

**R746-8-200. Definitions.**

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.

(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.

(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."

(ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."

(2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.

(b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:

- (i) the applicable UUSF surcharge;
- (ii) mandatory extended area service fees; or
- (iii) state subscriber line fees.

(c) "Affordable base rate" does not include:

- (i) municipal franchise fee(s);
- (ii) tax(es); or
- (iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):

- (A) included in a Commission-approved tariff; or
- (B) authorized under these rules.

(3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

(4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).

(5) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:

(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or

(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).

(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.

(7) The acronym "FCC" means the Federal Communications Commission.

(8) "Facilities-based provider" means a provider that uses:

- (a) its own facilities;
- (b) essential facilities or unbundled network elements obtained from another provider; or

(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.

(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.

(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.

(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.

(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

**R746-8-300. UUSF Funding.**

The following sections in the 300 series address UUSF Funding.

**R746-8-301. Calculation and Application of UUSF Surcharge.**

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission \$0.60 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

- (i) as an explicit charge to each end-user; or
- (ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission \$0.60 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.

(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(B) \$0.60 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

#### **R746-8-302. UUSF Surcharge Remittances.**

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total \$1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than \$1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

#### **R746-8-400. UUSF Distributions.**

The following sections in the 400 series address UUSF Distributions.

#### **R746-8-401. Rate-of-Return Regulated Providers.**

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) is in compliance with Commission orders and rules;

(c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, \$18 per access line;

(d) offers Lifeline service on terms and conditions prescribed by the Commission;

(e) operates as a facilities-based provider, not a reseller; and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

(i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:

(i) beginning July 1, 2016: 11.0%

(ii) beginning July 1, 2017: 10.75%;

(iii) beginning July 1, 2018: 10.5%;

(iv) beginning July 1, 2019, 10.25%;

(v) beginning July 1, 2020, 10.0%; and

(vi) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

#### **R746-8-402. Non-rate-of-return Regulated Providers.**

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

#### **R746-8-403. Lifeline Support.**

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed \$3.50 per Lifeline subscriber per month of subscription to a service that:

(i) provides service over landlines; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

- (i) the FCC's national verifier system; or
- (ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;
- (c) waive, for Lifeline subscribers, the following charges:
  - (i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and
  - (ii) within any 12-month period, the first nonrecurring service charge for:
    - (A) changing local exchange usage service to Lifeline service; and
    - (B) changing from flat rate service to message rate service; and
- (d)(i) add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;
- (ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and
- (e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.
- (4) An ETC participating in the Commission Lifeline program may not:
  - (a) disconnect Lifeline telephone service for nonpayment of toll service;
  - (b) require a Lifeline subscriber to purchase additional services from the ETC; or
  - (c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.
- (5) For an access line for which the UUSF surcharge is omitted pursuant to R746-8-301(3)(a)(iii), the UUSF surcharge amount that otherwise would have been remitted pursuant to R746-8-301 shall be deducted from the state Lifeline support paid to the provider.

**R746-8-404. One-time UUSF Distribution.**

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

**R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.**

- (1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons
- (2) Definitions.
  - (a) "Applicant" means a person applying for:
    - (i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;
    - (ii) a signal device; or
    - (iii) another assistive communication device.
  - (b) "Audiologist" means a person who:
    - (i)(A) has a master's or doctoral degree in audiology; or
    - (B) is licensed in audiology in Utah; and
    - (ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.
  - (c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.
  - (d) "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.
  - (e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.
  - (f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive

communication device.

- (g) "Speech language pathologist" means a person who:
  - (i) has a master's or doctoral degree in Speech Language Pathology; and
  - (ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.
- (h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.
- (i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.
- (j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:
  - (i) a key board;
  - (ii) an acoustic coupler;
  - (iii) a display screen;
  - (iv) a braille display; or
  - (v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.
- (3) Eligibility.
  - (a) At a minimum, an applicant shall demonstrate that the applicant:
    - (i) lives within the State of Utah;
    - (ii) is
      - (A) deaf;
      - (B) hard of hearing; or
      - (C) severely speech impaired;
    - (iii)(A) receives assistance from a low-income public assistance program administered by a state agency; or
    - (B) has an income of 200% of the Federal Poverty Guideline or less for the current year; and
    - (iv) is able to send and receive messages with a TDD or other appropriate assistive device.
  - (b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:
    - (i) a person who is licensed to practice medicine;
    - (ii) an audiologist;
    - (iii) an otolaryngologist;
    - (iv) a speech/language pathologist; or
    - (v) qualified personnel within a state agency.
- (4) Distribution process.
  - (a) If approved by the Commission to receive an assistive device, the applicant shall:
    - (i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and
    - (ii) report, as instructed by the Commission, for training and receipt of the approved device.
  - (b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.
- (5) Ownership and Liability.
  - (a)(i) An assistive device provided under this rule remains the property of the State of Utah.
  - (ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.
  - (b) A recipient shall be solely responsible for the costs of:
    - (i) repair of an assistive device, other than for normal wear and tear;
    - (ii) replacement of an assistive device;
    - (iii) paper required by an assistive device;
    - (iv) telephone and internet service; and
    - (v) light bulbs required by an assistive device.
  - (c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private

arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:

- (a) no longer intends to reside in Utah;
- (b) becomes ineligible pursuant to R746-8-405(3); or
- (c) is notified by the Commission to return the device.

**R746-8-405a. New Technology Equipment Distribution Program (NTEDP).**

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2021.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

- (A) deafness;
- (B) hardness of hearing; or
- (C) severe speech impairment;

(iii) demonstrate that:

(A) the individual is receiving assistance from a low-income public assistance program administered by a state agency; or

(B) has an income of 200% of the Federal Poverty Guideline or less for the current year;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited to ten additional participants in each six-month period of the pilot program.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

- (A) software and hardware failures; and
- (B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

**KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology  
April 30, 2019**

54-3-1  
54-4-1  
54-8b-15  
54-8b-10

**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.****A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

#### B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

#### **R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

##### (1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.



(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

- (a) the property owner's name;
- (b) the address of the property; and
- (c) the serial number of the property.

(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.**

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of

the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

**R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.**

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

- (i) Course 101 - Basic Appraisal Principles;
- (ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);
- (iii) Course 501 - Assessment Practice in Utah;
- (iv) Course 502 - Mass Appraisal of Land;
- (v) Course 503 - Development and Use of Personal Property Schedules;
- (vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and
- (vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

- (i) successfully complete courses 501 and 502;
- (ii) successfully complete a comprehensive residential field practicum; and
- (iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

- (i) successfully complete courses 501, 502, and 505;
- (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and
- (iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) For an individual commencing employment as an ad valorem personal property auditor/appraiser before April 15, 2019 to qualify for this designation, an individual must, by April 15, 2021:

- (i) successfully complete courses 101, 103, 501, and 503; and
- (ii) successfully complete a comprehensive auditing practicum.

(b) For an individual commencing employment as an ad valorem personal property auditor/appraiser on or after April 15, 2019 to qualify for this designation, an individual must within 24 months of commencing that employment:

- (i) successfully complete courses 101, 103, 501, and 503; and
- (ii) successfully complete a comprehensive auditing practicum.

(c) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 6 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state

certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;  
b) acquisition of personal property; or  
c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative

amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the

expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.**

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or  
 (b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of

the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(11) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

**R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.**

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not

normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures;

(i) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be

conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsections (2)(b) and (c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the

county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

**R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.**

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- (a) a description of the leased or rented equipment;
- (b) the year of manufacture and acquisition cost;
- (c) a listing, by month, of the counties where the equipment has situs; and
- (d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and

become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.**

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission.

Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned

computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
18	72%
17	42%
16 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
18	91%
17	81%
16	70%
15	59%
14	48%
13	38%
12	25%
11 and prior	13%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers.



(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	35%
14 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides;
- (J) signs, mechanical and electrical; and
- (K) LED component of a billboard.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
18	92%
17	84%
16	74%
15	64%
14	55%
13	45%
12	34%
11	23%
10 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
19	90%
18	71%
17	66%
16	61%
15	56%

14	51%
13	45%
12	40%
11	35%
10	30%
09	20%
08	15%
07	10%
06 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

Examples of machinery and equipment include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry.

Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
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18	94%
17	87%
16	79%
15	71%
14	64%
13	56%
12	47%
11	38%
10	30%
09	21%
08 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	91%
16	84%
15	78%
14	73%
13	68%
12	60%
11	54%
10	48%
09	42%
08	35%
07	28%
06	20%
05 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
18	62%
17	46%
16	21%
15	9%
14 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2019 model equipment purchased in 2018 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
18	49%
17	47%
16	44%
15	42%
14	39%
13	37%
12	35%
11	32%
10	30%
09	28%
08	25%
07	23%
06	20%
05 and prior	13%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment.

Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
18	47%
17	34%
16	24%
15	15%
14 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboard (excluding LED component);
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;
- (G) underground fiber optic cable;
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	94%
16	89%
15	85%
14	82%
13	79%
12	73%
11	69%
10	64%
09	63%
08	59%
07	57%
06	51%
05	45%
04	38%
03	30%
02	23%
01	15%
00 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
  - (A) houseboats equal to or greater than 31 feet in length;
  - (B) sailboats equal to or greater than 31 feet in length; and
  - (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
  - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
  - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
  - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
19	90%
18	67%
17	64%
16	62%
15	60%
14	57%
13	55%
12	53%
11	50%
10	48%
09	46%
08	43%
07	41%

06	39%
05	36%
04	34%
03	32%
02	29%
01	27%
00	25%
99	21%
98 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
18	95%
17	87%
16	81%
15	74%
14	67%
13	61%
12	55%
11	46%
10	40%
09	34%
08	27%
07	19%
06 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2019 percent good applies to 2019 models purchased in 2018.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
19	95%
18	85%
17	82%
16	78%
15	74%
14	69%
13	65%
12	61%
11	57%
10	53%
09	50%
08	46%
07	41%
06	36%
05	30%
04	25%
03 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24  
Percent of Installation Cost

Year of Installation	Percent of Installation Cost
18	94%
17	88%
16	82%
15	77%
14	71%
13	65%
12	59%

11	54%
10	48%
09	42%
08	36%
07 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	36%
14	19%
13 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
18	97%
17	95%
16	92%
15	90%
14	87%
13	84%
12	82%
11	79%
10	77%
09	74%
08	71%
07	69%
06	66%
05	64%
04	61%
03	58%
02	56%
01	53%
00	51%
99	48%
98	45%
97	43%
96	40%
95	38%
94	35%
93	32%
92	30%
91	27%
90	25%
89	22%
88	19%
87	17%

86	14%
85	12%
84 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

- (i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and
- (ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
18	75%
17	50%
16	25%
15 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2019.

**R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.**

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

- (a) the owner of record of the property;
- (b) the property parcel, account, or serial number;
- (c) the location of the property;
- (d) the tax year in which the exemption was originally granted;
- (e) a description of any change in the use of the real or personal property since January 1 of the prior year;
- (f) the name and address of any person or organization conducting a business for profit on the property;
- (g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
- (h) a description of any personal property leased by the owner of record for which an exemption is claimed;
- (i) the name and address of the lessor of property described in Subsection (2)(h);
- (j) the signature of the owner of record or the owner's authorized representative; and
- (k) any other information the county may require.

(3) The annual statement shall be filed:

- (a) with the county legislative body in the county in which the property is located;
- (b) on or before March 1; and
- (c) using:
  - (i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or
  - (ii) a form that contains the information required under Subsection (2).

**R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.**

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

- 1. the property identification number;
- 2. the appraised value of the property and, if applicable,

any adjustment for residential exemptions expressed in terms of taxable value;

- 3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and
- 4. itemized tax rate information for each taxing entity and total tax rate.

**R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.**

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

- 1. owner of the property;
- 2. property identification number;
- 3. description and location of the property; and
- 4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

**R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.**

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

- (i) company homes occupied by superintendents and other employees on 24-hour call;
- (ii) storage facilities for railroad operations;
- (iii) communication facilities; and
- (iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

- (i) land leased to service station operations;
- (ii) grocery stores;
- (iii) apartments;
- (iv) residences; and

(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

**R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.**

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

**R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.**

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied

when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

**R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.**

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

**R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles

accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

**R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

**R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.**

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the

percentage of the property that is used as a primary residence.  
 (f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (A) the owner of record of the property;
- (B) the property parcel number;
- (C) the location of the property;
- (D) the basis of the owner's knowledge of the use of the property;
- (E) a description of the use of the property;
- (F) evidence of the domicile of the inhabitants of the property; and
- (G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

- (A) on a form provided by the county; or
- (B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

**R884-24P-53. 2019 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1  
Irrigated I

1) Box Elder	677
2) Cache	582
3) Carbon	451
4) Davis	719
5) Emery	427
6) Iron	683
7) Kane	357
8) Millard	674
9) Salt Lake	616
10) Utah	641
11) Washington	557
12) Weber	694

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2  
Irrigated II

1) Box Elder	595
2) Cache	497
3) Carbon	359

4) Davis	633
5) Duchesne	417
6) Emery	344
7) Grand	332
8) Iron	599
9) Juab	380
10) Kane	275
11) Millard	592
12) Salt Lake	529
13) Sanpete	460
14) Sevier	484
15) Summit	393
16) Tooele	381
17) Utah	554
18) Wasatch	416
19) Washington	475
20) Weber	608

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3  
Irrigated III

1) Beaver	514
2) Box Elder	468
3) Cache	376
4) Carbon	239
5) Davis	509
6) Duchesne	292
7) Emery	216
8) Garfield	181
9) Grand	210
10) Iron	475
11) Juab	256
12) Kane	152
13) Millard	468
14) Morgan	328
15) Piute	285
16) Rich	152
17) Salt Lake	403
18) San Juan	146
19) Sanpete	338
20) Sevier	360
21) Summit	269
22) Tooele	255
23) Uintah	316
24) Utah	425
25) Wasatch	289
26) Washington	349
27) Wayne	281
28) Weber	483

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4  
Irrigated IV

1) Beaver	424
2) Box Elder	387
3) Cache	292
4) Carbon	153
5) Daggett	162
6) Davis	425
7) Duchesne	205
8) Emery	134
9) Garfield	97
10) Grand	127
11) Iron	389
12) Juab	170
13) Kane	68
14) Millard	380
15) Morgan	243
16) Piute	199
17) Rich	70
18) Salt Lake	312
19) San Juan	66
20) Sanpete	254
21) Sevier	276
22) Summit	185
23) Tooele	174
24) Uintah	234
25) Utah	341
26) Wasatch	206



27)	Washington	263
28)	Wayne	198
29)	Weber	395

7)	Garfield	41
8)	Grand	42
9)	Iron	42
10)	Juab	44
11)	Kane	41
12)	Millard	40
13)	Morgan	55
14)	Rich	41
15)	Salt Lake	47
16)	San Juan	45
17)	Sanpete	47
18)	Summit	41
19)	Tooele	45
20)	Uintah	47
21)	Utah	43
22)	Wasatch	41
23)	Washington	41
24)	Weber	68

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5  
Fruit Orchards

1)	Beaver	586
2)	Box Elder	634
3)	Cache	586
4)	Carbon	586
5)	Davis	639
6)	Duchesne	586
7)	Emery	586
8)	Garfield	586
9)	Grand	586
10)	Iron	586
11)	Juab	586
12)	Kane	586
13)	Millard	586
14)	Morgan	586
15)	Piute	586
16)	Salt Lake	586
17)	San Juan	586
18)	Sanpete	586
19)	Sevier	586
20)	Summit	586
21)	Tooele	586
22)	Uintah	586
23)	Utah	644
24)	Wasatch	586
25)	Washington	693
26)	Wayne	586
27)	Weber	639

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8  
Dry IV

1)	Beaver	14
2)	Box Elder	50
3)	Cache	70
4)	Carbon	13
5)	Davis	13
6)	Duchesne	16
7)	Garfield	13
8)	Grand	13
9)	Iron	13
10)	Juab	13
11)	Kane	13
12)	Millard	12
13)	Morgan	23
14)	Rich	13
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	16
18)	Summit	13
19)	Tooele	13
20)	Uintah	16
21)	Utah	13
22)	Wasatch	13
23)	Washington	12
24)	Weber	38

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6  
Meadow IV

1)	Beaver	218
2)	Box Elder	216
3)	Cache	223
4)	Carbon	113
5)	Daggett	134
6)	Davis	226
7)	Duchesne	143
8)	Emery	118
9)	Garfield	89
10)	Grand	115
11)	Iron	225
12)	Juab	130
13)	Kane	93
14)	Millard	166
15)	Morgan	168
16)	Piute	163
17)	Rich	90
18)	Salt Lake	198
19)	Sanpete	167
20)	Sevier	172
21)	Summit	173
22)	Tooele	158
23)	Uintah	177
24)	Utah	214
25)	Wasatch	179
26)	Washington	195
27)	Wayne	147
28)	Weber	259

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9  
GR I

1)	Beaver	65
2)	Box Elder	63
3)	Cache	60
4)	Carbon	45
5)	Daggett	45
6)	Davis	52
7)	Duchesne	59
8)	Emery	61
9)	Garfield	66
10)	Grand	67
11)	Iron	64
12)	Juab	56
13)	Kane	65
14)	Millard	65
15)	Morgan	57
16)	Piute	77
17)	Rich	56
18)	Salt Lake	61
19)	San Juan	63
20)	Sanpete	54
21)	Sevier	56
22)	Summit	62
23)	Tooele	61
24)	Uintah	69
25)	Utah	56
26)	Wasatch	45
27)	Washington	56
28)	Wayne	75

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7  
Dry III

1)	Beaver	47
2)	Box Elder	79
3)	Cache	100
4)	Carbon	42
5)	Davis	44
6)	Duchesne	47

29) Weber 60

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10  
GR II

1) Beaver	20
2) Box Elder	20
3) Cache	19
4) Carbon	13
5) Daggett	12
6) Davis	16
7) Duchesne	16
8) Emery	18
9) Garfield	20
10) Grand	19
11) Iron	19
12) Juab	16
13) Kane	21
14) Millard	21
15) Morgan	18
16) Piute	22
17) Rich	17
18) Salt Lake	18
19) San Juan	21
20) Sanpete	15
21) Sevier	15
22) Summit	17
23) Tooele	17
24) Uintah	24
25) Utah	20
26) Wasatch	14
27) Washington	18
28) Wayne	24
29) Weber	17

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11  
GR III

1) Beaver	15
2) Box Elder	14
3) Cache	12
4) Carbon	11
5) Daggett	10
6) Davis	11
7) Duchesne	12
8) Emery	12
9) Garfield	13
10) Grand	13
11) Iron	13
12) Juab	12
13) Kane	13
14) Millard	13
15) Morgan	11
16) Piute	15
17) Rich	11
18) Salt Lake	13
19) San Juan	14
20) Sanpete	12
21) Sevier	12
22) Summit	12
23) Tooele	12
24) Uintah	16
25) Utah	12
26) Wasatch	11
27) Washington	11
28) Wayne	15
29) Weber	12

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12  
GR IV

1) Beaver	5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5

8) Emery	5
9) Garfield	5
10) Grand	5
11) Iron	5
12) Juab	5
13) Kane	5
14) Millard	5
15) Morgan	5
16) Piute	5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	5
24) Uintah	5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	5
29) Weber	5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13  
Nonproductive Land

Nonproductive Land	
1) All Counties	5

**R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.**

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

**R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.**

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax

Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to

judgments issued prior to January 1, 1999.

**R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.**

**A. Definitions.**

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not

include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.**

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility

assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any

party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is  $CF/(k-g)$ , where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is  $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$ , where  $k(e)$  is the cost of equity and  $R(f)$  is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross

Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

- (I) unused capacity;
- (II) economic conditions; or
- (III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

- (A) subtracting intangible property;
- (B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and
- (C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an

accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

- (I) airline under Section 59-2-102;
- (II) air charter service under Section 59-2-102; and
- (III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection

(6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

**884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.**

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

**884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.**

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

**884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.**

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall

include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

**884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.**

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's



claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification

requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.**

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:

(i) the Utah Housing Corporation project identification number;

(ii) the project name;

(iii) the project address;

(iv) the city in which the project is located;

(v) the county in which the project is located;

(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;

(vii) the building address for each building included in the project;

(viii) the total apartment units included in the project;

(ix) the total apartment units in the project that are eligible for low-income housing tax credits;

(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);

(xi) whether the project is:

(A) the rehabilitation of an existing building; or

(B) new construction;

(xii) the date on which the project was placed in service;

(xiii) the total square feet of the buildings included in the project;

(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;

(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and

(xvi) for each apartment unit included in the project:

(A) the number of bedrooms in the apartment unit;

(B) the size of the apartment unit in square feet; and

(C) any rent limitation to which the apartment unit is subject; and

(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the

commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

**R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.**

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

**R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.**

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the

last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

- (i) class;
- (ii) property type;
- (iii) geographic location; and
- (iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

**R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.**

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

**R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.**

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

**R884-24P-74. Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201.**

(1) A mining claim shall be assessed by the county in which the mining claim is located if the commission determines that the mining claim is used for other than mining purposes.

(2) The owner of a mining claim may request that the mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a copy of the title to the mining claim;

(b) certification that all owners of the mining claim seek assessment by the county in which the mining claim is located;

(c) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(d) evidence that the mining claim is used for other than mining purposes.

(3) A county may request that a mining claim be assessed

by the county in which the mining claim is located by providing the following to the commission:

(a) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(b) evidence that the mining claim is used for other than mining purposes.

(4) Evidence that a mining claim is used for other than mining purposes is dependent on specific facts and circumstances and includes:

(a) evidence that the mining claim will be actively and solely used for other than mining purposes for more than a temporary period of time;

(b) evidence that a restrictive covenant or conservation easement prohibiting mining activities on the mining claim is recorded in the county where the mining claim is located;

(c) evidence that local zoning ordinances prohibit mining activities on the mining claim; or

(d) in the case where the mining claim has been used for mining activities at any time, the mining claim has been reclaimed as evidenced by the return of the mine reclamation bond to the owner of the mining claim by the Division of Oil, Gas, and Mining.

59-2-1106  
59-2-1107 through 59-2-1109  
59-2-1113  
59-2-1115  
59-2-1202  
59-2-1202(5)  
59-2-1302  
59-2-1303  
59-2-1308.5  
59-2-1317  
59-2-1328  
59-2-1330  
59-2-1347  
59-2-1351  
59-2-1365  
59-2-1703

**KEY: taxation, personal property, property tax, appraisals**  
**March 28, 2019** Art. XIII, Sec 2  
**Notice of Continuation November 10, 2016**

9-2-201  
11-13-302  
41-1a-202  
41-1a-301  
59-1-210  
59-2-102  
59-2-103  
59-2-103.5  
59-2-104  
59-2-201  
59-2-210  
59-2-211  
59-2-301  
59-2-301.3  
59-2-302  
59-2-303  
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59-2-701  
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59-2-704  
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59-2-705  
59-2-801  
59-2-918 through 59-2-924  
59-2-1002  
59-2-1004  
59-2-1005  
59-2-1006  
59-2-1101  
59-2-1102  
59-2-1104

**R994. Workforce Services, Unemployment Insurance.****R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by completing an application at the Department's website, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

**R994-403-102a. Cancellation of Claim.**

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

**R994-403-103a. Reopening a Claim.**

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by completing the application to reopen at the Department's website, or as otherwise instructed by the Department. The effective date of the reopened claim

will be the Sunday of the week in which the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

**R994-403-104g. Using Unused Wages for a Subsequent Claim.**

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

**R994-403-105a. Filing Weekly Claims.**

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

**R994-403-106a. Good Cause for Late Filing.**

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

**R994-403-107b. Registration, Workshops, Deferrals -**

**General Definition.**

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

**R994-403-108b. Deferral of Work Registration and Work Search.**

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

**(a) Labor Disputes.**

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

**(b) Union Attachment.**

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

**(c) Employer Attachment.**

A claimant who has an attachment to a prior employer and reasonable assurance of returning to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. A claimant is presumed to have reasonable assurance of employment if he or she previously worked for the employer and there has been no change in the conditions of his or her employment which would indicate severance of the employment relationship. The deferral should generally not extend longer than ten weeks. To extend beyond ten weeks, the claimant must have earned at least half of his or her base period earnings with the employer in question and the employer must submit a request to the department.

**(d) Three Week Deferral.**

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

**(e) Seasonal.**

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

**(f) Department approval.**

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

**R994-403-109b. Profiled Claimants.**

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant participates in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

**R994-403-110c. Able and Available - General Definition.**

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

**R994-403-111c. Able.**

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which

the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

- (i) willing to accept any work within his or her ability;
- (ii) actively seeking work consistent with the limitation;

and

- (iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation

benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

**R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is

unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

- (A) is a party to the action;
- (B) had employment which he or she was unable to continue or accept because of the court service; or
- (C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

- (i) is actively seeking work outside the restrictions of the noncompete contract;
- (ii) has the skills and/or training necessary to obtain that work; and
- (iii) can reasonably expect to obtain that employment.

(5) Employer/Occupational Requirements.

If the claimant does not have the license or special

equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend

school. Youth under the age of 16 may not work:

- (a) during school hours except as authorized by the proper school authorities;
- (b) before or after school in excess of 4 hours a day;
- (c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;
- (d) in excess of 8 hours in any 24-hour period; or
- (e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

#### **R994-403-113c. Work Search.**

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

#### **R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

- (1) has the burden of proving that he or she is able, available, and actively seeking full-time work;
- (2) must report any information that might affect eligibility;
- (3) must provide any information requested by the Department which is required to establish eligibility;
- (4) must immediately notify the Department if the claimant is incarcerated; and
- (5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:
  - (a) the date of the contact,
  - (b) the name of the employer or other identifying information such as a job reference number,
  - (c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,
  - (d) details of the position for which the claimant applied,
  - (e) method of contact, and
  - (f) results of the contact.

#### **R994-403-115c. Period of Ineligibility.**

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or

available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

#### **R994-403-116e. Eligibility Determinations: Obligation to Provide Information.**

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

#### **R994-403-117e. Claimant's Responsibility.**

(1) The claimant must provide all of the following:

- (a) his or her correct name, social security number, citizenship or alien status, address and date of birth;
- (b) the correct business name and address for each base period employer and for each employer subsequent to the base period;
- (c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;
- (d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and
- (e) any other information requested by the Department. The Claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. Mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and five (5) full business days to respond to requests mailed through the U. S. Mail.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

#### **R994-403-118e. Disqualification Periods if a Claimant Fails**



**to Provide Information.**

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (5) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

**R994-403-119e. Overpayments Resulting from a Failure to Provide Information.**

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

**R994-403-120e. Employer's Responsibility.**

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

**R994-403-121e. Penalty for the Employer's Failure to Comply.**

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to

determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

**R994-403-122e. Good Cause for Failure to Comply.**

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

**R994-403-123. Obligation of Department Employees.**

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

**R994-403-201. Department Approval for School Attendance - General Definition.**

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

**R994-403-202. Qualifying Elements for Approval of Training.**

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 24 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

#### **R994-403-203. Extensions of Department Approval.**

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

#### **R994-403-204. Availability Requirements When Approval is Granted.**

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory

progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

#### **R994-403-205. Short-Term Training.**

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

#### **R994-403-301. Requirements for Special Benefits.**

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

#### **R994-403-302. Foreign Travel.**

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus

are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

**KEY: filing deadlines, registration, student eligibility,  
unemployment compensation**  
May 1, 2019 35A-4-403(1)  
Notice of Continuation March 29, 2018